Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

ROBERT McCOY, KEVIN PERKINS,
RON HARPER and WILLIAM ELLIOT,

Petitioners,

vs.

CHICAGO HEIGHTS PARK DISTRICT and
THE COOK COUNTY CLERK,

Respondents.

On A Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

WHETHER THE PARK DISTRICT, WHEN CHANGING ITS GOVERNANCE TO SATISFY A VOTING RIGHTS VIOLATION, DID SO WITHOUT STATUTORY AUTHORITY AND IN CONTRAVENTION OF THE VOTING RIGHTS ACT AND, WAS SUCH CHANGE TO CORRECT A SECTION 2 VIOLATION?

WAS A CONFLICT CREATED BETWEEN CIRCUIT PANELS WITHIN THE SEVENTH CIRCUIT WHEN THE PARK DISTRICT CHANGED ITS GOVERNANCE?

IS THERE A CONFLICT BETWEEN RULINGS AMONG CIRCUITS ON WHEN IF AT ALL, ONE COULD MIX AT-LARGE DISTRICTS WITH SINGLE MEMBER DISTRICTS WHEN ATTEMPTING TO REMEDY A VOTING RIGHTS VIOLATION?

WHETHER THE SEVENTH CIRCUIT RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND THUS ABUSED ITS DISCRETION IN REVERSING THE DISTRICT COURT?

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CITATIONS OF REPORTS AND OPINIONS

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STATEMENT OF JURISDICTION

A. United States Supreme Court Jurisdiction

The jurisdiction for a Petition for a Writ of Certiorari to the United States Supreme Court, is pursuant to 28 U.S.C. § 1254 and Rule 13 of the United States Supreme Court, in which the time for appealing was extended until December 18, 2000. Judgment was entered by the Seventh Circuit Court of Appeals on July 27, 2000, regarding the Park and City appeal that had been consolidated.

The City of Chicago Heights motioned for a rehearing on its part of the opinion. No other party requested a rehearing, including the Chicago Heights Park District. On August 27, 2000, the Seventh Circuit denied the City of Chicago Heights' petition for a rehearing.

B. Appellate Court Jurisdiction

The United States Court of Appeals for the Seventh Circuit had jurisdiction over its appeal pursuant to 28 U.S.C. § 1291.

C. District Court Jurisdiction

The United States District Court for the Northern District of Illinois had jurisdiction over this cause pursuant to 28 U.S.C. § 1331 because a federal question exists pursuant to the Voting Rights Act, 42 U.S.C. § 1971 *et seq.* The district court awarded attorneys' fees pursuant to 42 U.S.C. § 1973 and 42 U.S.C. § 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SECTION 2 OF THE VOTING RIGHTS ACT (42 U.S.C. § 1971, et seq.)

2. No person acting under color of law shall –

A. in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

B. deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not

material in determining whether such individual is qualified under State law to vote in such election; or

C. employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to Title III of the *Civil Rights Act of* 1960 (42 U.S.C.A. § 1974 6 *et seq.*): *Provided, however,* That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

CONSTITUTION OF THE STATE OF ILLINOIS, ARTICLE II, LOCAL GOVERNMENT

SECTION 1. MUNICIPALITIES and UNITS OF LOCAL GOVERNMENT

"Municipalities" mean cities, villages and incorporated towns. "Units of local governments" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers

in respect to limited governmental subjects, but does not include school districts.

ILLINOIS PARK DISTRICT CODE, Illinois Compiled Statutes (ILCS), 70 ILCS 1205

SECTION 1205/1-3 DEFINITIONS

§ 1-3 (a) The term "park district" or "district" where used herein shall refer to any district having a population of less than 500,000 inhabitants organized under the provisions of this code, or organized under "An Act to provide for the creation of pleasure driveways and park districts" approved June 19, 1983, as amended. . . .

70 ILCS 1205/2-10. Fixing terms of commissioners

§ 2-10. Except as otherwise provided herein, within 30 days after declaration of the result of the election to organize a district, the five persons elected as commissioners shall meet and decide by lot, the term for which each shall hold office. Two shall serve for six years; two shall serve for four years; and one shall serve for two years, respectively and until their successors shall be duly elected and qualified.

70 ILCS 1205/2-10a. Seven-member boards

§ 2-10a. Any district may provide by referendum, or by resolution of the board, that the board shall be comprised of 7 commissioners. Any such referendum shall be initiated and held in the same manner as is provided by the general election law.

If a majority of the votes cast on the proposition is in favor of the 7-member board, or if the board adopts a resolution stating that it is acting pursuant to this Section in order to create a 7-member board, then whichever of the following transition schedules are appropriate shall be applied: At the election of commissioners next following by at least 60 days the date on which the proposition to create a 7-member board was approved at referendum or by resolution, the number of commissioners to be elected shall be 2 more than the number that would otherwise have been elected. If this results in the election, pursuant to § 2-12 of this Act, of 4 commissioners at that election, one of the 4, to be determined by lot within 30 days after the election, shall serve for a term of 4 years or 2 years as the case may be, instead of 6 years, so that his term will expire in the same year in which the term of only one of the incumbent commissioners expires. Thereafter all commissioners shall be elected for 6-year terms as provided in § 2-12. If the creation of a 7-member board results in the election of either 3 or 4 commissioners, pursuant to § 2-12a of this Act, at that election, 2 of them, to be determined by lot within 30 days after the election, shall serve for terms of 2 years instead of 4 years. Thereafter all commissioners shall be elected for 4-year terms as provided in § 2-12a of this Act.

In any district where a 7-member board has been created pursuant to this Section, whether by referendum or by resolution, the number of commissioners may later be reduced to 5, but only by a referendum initiated and held in the same manner as prescribed in this Section for creating a 7-member board. No proposition to reduce the number of commissioners shall affect the terms of any

commissioners holding office at the time of the referendum or to be elected within 60 days of the referendum.

STATEMENT OF THE CASE

On June 8, 1987, under case #87 CV 5112, relative to the City of Chicago Heights and the Chicago Heights Election Commission (hereinafter referred to as the "City"); and under case #88 CV 9800, relative to the Chicago Heights Park District and the Cook County (of Illinois) Clerk (the "Park"), on November 17, 1988, Petitioners Robert McCoy, Kevin Perkins, Ron Harper and William Elliot, filed a complaint against the City and Park, for injunctive and other equitable reliefs for violating 42 U.S.C. § 1971, § 2, of the Voting Rights Act of 1965, by the City's 4-members at-large commission and the Park District's 5-members at-large commission. It was alleged that they violated § 2 of the Voting Rights Act because their governance diluted the voting strength of African Americans. At the time of filing the lawsuit, the Park District commissioner were six (6) year terms.

Subsequently, the Park and Plaintiffs Ron Harper and William Elliot agreed to a consent decree. Plaintiffs Kevin Perkins and Robert McCoy had always opposed the consent decree. Perkins and McCoy parted their ways with their attorney and Harper and Elliot. Perkins and McCoy brought in a new attorney and Harper and Elliot kept the same attorney. On May 23, 1994, the district court entered a consent decree, findings of fact, conclusions of law and judgment order. The consent decree evolved a new system of government for the Park District. There were six

(6), single-member districts for the Park District Commissioners, plus the Park Board President being elected at-large. In conjunction with the consent decree, on January 9, 1995, the Park District passed a resolution, adopting its new governance of six (6), single-member districts for six (6) Commissioners, with the Park Board President being elected at-large, and it reduced their terms from six (6) years to four (4) years term.

The attorney for Plaintiffs Harper and Elliot petitioned the district court for attorneys' fees and expenses. The Park District had no objections to this petition, and they had no objections that these Plaintiffs were the prevailing parties. The court entered a fee award, which the Park District subsequently paid.

Plaintiffs Perkins and McCoy appealed the consent decree as being a continued violation of § 2. February, 1995, the Seventh Circuit agreed with McCoy and Perkins and vacated the entire consent decree. It ruled that the parties could not consent to modified statutory forms of government, absent a specific finding of a Voting Rights Act violation and that such changes had to be necessary to remedy such violation. *Perkins, et al. v. Chicago Heights Park District, et al.*, 47 F3d 212, at 217-8 (7th Cir., 1995). On remand, the prior judge had expired from a serious illness, so the case was assigned to another judge.

He held a hearing on March 4, 1997, and issued a memorandum opinion and order finding that the old at-large commission form of government violated § 2 of the Voting Rights Act. To provide the parties another opportunity to address the remedy, he ordered the parties to submit remedial plans and memoranda supporting the

plans. Plaintiffs McCoy and Perkins submitted a remedial plan that the City was required by statute to adopt when going from a commission form of government to another statutory form of government, except they modified their plan (as all parties did), by suggesting only one (1) alderperson per ward, as opposed to the statutory two (2) alderpersons per ward. The City submitted a hybrid, strong mayor remedy that substantially varied from the statute, and varied from its prior structure from its attempt at a consent decree that had been rejected by the appellate court. The Park did not submit a remedy, but stayed with the one that the appellate court had rejected. Plaintiffs Harper and Elliot agreed with the City and the Park submissions.

On May 28, 1998, the court rejected the City's, the Park's remedial plans, and the Plaintiffs Harper and Elliot's concurrence with these plans, as not being in compliance with the VRA. He issued a memorandum opinion and ordered a hybrid of Plaintiffs McCoy and Perkins' aldermanic proposed form of governance remedy for the City and the Park District, featuring an at-large cumulative voting. (Doc. 478, 479) Final judgment to that effect was entered on July 27, 1998. (Doc. 533).

In July and August of 1998, defendants, City of Chicago Heights and Chicago Heights Park District ("Park District") appealed the district court's final judgment on the merits of plaintiffs' Voting Rights Act claim. (*Ron Harper et al. v. City of Chicago Heights and Chicago Heights Park District*, Consol. Nos. 95-3925, 98-2785, 98-2811, 98-2899, 98-3004, 98-3051, 98-3075). Oral argument was held on April 6, 1999.

Concurrent with the filing of these appeals, consideration of the attorneys' fees remained an issue. By Memorandum Opinion and Order dated March 26, 1999, entered March 29, 1999, the district court awarded attorneys' fees, costs and expenses in specific amounts to: Plaintiffs Harper and Elliot's counsel from the City of Chicago Heights; and Plaintiffs Perkins and McCoy's counsel, in part from the City of Chicago Heights and in part from the Chicago Heights Park District, plus fees and expenses associated with their petition for attorneys' fees and expenses.

April 23, 1999, the City and the Park filed their Notices of Appeal to the Seventh Circuit Court of Appeals. (Nos. 99-2007, 99-2008). On May 10, 1999, under case #98-2785, the Seventh Circuit consolidated all the pending appeals.

On the appeal, the City withdrew any and all objections to Plaintiffs Harper's and Elliot's attorneys' fee request. They were subsequently paid. They withdrew from all deliberations.

On July 27, 2000, the Seventh Circuit Court of Appeals ruled and issued its opinion on the various consolidated appeals. It sustained the district court relative to its order on the City and overturned the District Court's decision against the Chicago Heights Park District's violations of the voting rights. It remanded the fees to McCoy/Perkins' attorney portion for the Park District for further review by the district court.

REASONS FOR GRANTING THE WRIT

THE PARK DISTRICT CHANGED ITS GOVERNANCE WITHOUT STATUTORY AUTHORITY AND SUCH CHANGE WAS NOT TO CORRECT A § 2 VIOLATION AND THE APPELLATE COURT SHOULD HAVE AFFIRMED THE DISTRICT COURT

The *Harper, et al. v. Chicago Heights Park District, et al.*, 223 F.3d 593 ruling conflicts with the *Perkins, et al. v. Chicago Heights Park District, et al.*, 47 F.3d 212 (7th Cir., 1995) ruling. At 47 F.2d, page 217, *Perkins*, the Seventh Circuit stated that:

> On remand, the parties may either attempt to reach an agreement in light of our discussion above or may proceed to trial. If the parties choose . . . ***after*** [emphasis added] a finding of a Voting Rights Act violation, adopt . . . alternative forms of government provided by Illinois law. However, **the parties cannot modify the chosen form at-will.** [emphasis added].

The Park District is a municipality created by law and derives its authority from such laws. *Kocsis v. Chicago Park District*, 362 Ill. 24, 198 N.E. 847, 103 A.L.R. 141 (1936)[1] Thus, the Park District cannot make changes from its statutory authority, except when it is authorized to do so. Prior to the admissions that its at-large form of governance violated the Voting Rights Act, the Park District had a 5-member district, and the commissioners were

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[1] Illinois Constitution, Article VII defines park districts as municipalities, with powers as " . . . special districts . . . which exercise limited governmental powers or powers in respect to limited governmental subjects . . . " Also see 70 ILCS 1205/1-3 which defines park districts.

elected at-large. They had six (6) year terms. The Illinois Statute limits the Park District to a governance of 5 or 7-member commission. 70 ILCS 1205/§§ 2-10 and 2-10a. There is no provision for a 6-member commission form of governance. Yet, the Park District, through the consent decree device, interdicted a new governance system of six (6), single-member districts for the Park District Commissioners, plus the Park Board President being elected at-large. On January 9, 1995, it passed a resolution and adopted a new governance of six (6), single-member districts for six (6) Commissioners, plus the Park Board President being elected at-large. It also reduced the terms from 6 to 4 year terms.

A CONFLICT WAS CREATED BETWEEN CIRCUITS WHEN THE PARK DISTRICT WAS INITIALLY NOT PERMITTED TO CHANGE ITS GOVERNANCE OUTSIDE THE STATE LAW, BUT ON A LATER APPEAL, WAS PERMITTED TO EFFECT SUCH CHANGE OUTSIDE THE STATE LAW, AND THE DISTRICT COURT SHOULD HAVE BEEN AFFIRMED

One reason the United States Supreme Court may accept a writ of certiorari, may occur when there is a conflict in cases in the same circuit. Here, in the same instant case, there is a conflict within the same circuit. Under *Harper*, 223 F.3d 593, the circuit permitted the Park District to make governance changes outside the state statute. However, under *Perkins*, 47 F.3d 212, the circuit would not permit the Park District to make governance changes outside the state statute. Such conflict within the circuit, and under the same case, should permit this case to be heard under the Writ of Certiorari.

THERE IS A CONFLICT BETWEEN THE RULINGS AMONG CIRCUITS THAT NEED THE SUPREME COURT'S GUIDANCE FOR UNIFORMITY OR CLARIFICATION

Another reason the United States Supreme Court may accept a Writ of Certiorari is where a decision in one circuit may conflict with a decision in another circuit. Under the Seventh Circuit of *Harper,* 223 F.3d 593, the circuit permitted the Park District's governance of 6-single member districts, with the president being elected at-large.

In the Eleventh Circuit, the circuit rejected proposals to have the chairperson elected at-large. *Dillard v. Crenshaw County,* 831 F.2d 246 (11th Cir., 1987). *In Dillard,* the Calhoun County Commission was enacted in 1939, with a 3-member commission, a chairperson and two associates. All were to be elected at-large. A Voting Rights Act complaint was filed against nine of these counties in Alabama. Before the district court issued its opinion, they all either reached a settlement or their settlement was modified by the court. The agreement included a composition of 5-member associate commissioners, and one at-large chairperson. One of the districts had a minority district with a super majority voting age population. The district court rejected the at-large arrangement and in its place, had the chair come from the associates on a rotating basis. Calhoun County appealed the court's modification of its settlement. The appellate court remanded the case for "either reaffirmation of the rotating chairperson system or for approval of a proposed alternative that fully preserves the elected integrity of the body of associate commissioners." *Dillard v. Crenshaw,* 831

F.2d 253. The court rejected *the at-large* election of the chairperson. Like the court in *Crenshaw,* the court should reject the at-large president of the Park District. There is no difference. In the *United States of America v. Dallas County Commissioners, Dallas County, Alabama,* 850 F.2d 1430 (11th Cir., 1988) (*Dallas I*), the court rejected the at-large election of a probate judge who was to serve as a tie breaker and chair of the county commission. In the *United States of America v. Dallas County Commissioners, Dallas County, Alabama,* 850 F.2d 1433 (11th Cir., 1988) (*Dallas II*), the court rejected the Southern District Court of Alabama's court ordered plan to remedy a voting rights violation. Two of the 5-districts had voting age populations with white majorities; two had black majorities, and the fifth was an at-large district, while the other four were single member districts. On appeal by the government, the appellate court rejected the at-large provision and found that this scheme was insufficient. In adopting the expert's remedy of 5-single member districts for this ten year old case, the court stated at 1412:

> In fashioning this relief, we do not take lightly the fact that the School Board has had ample opportunity to devise an election plan which cures the § 2 violation . . .

It remanded this ten year old case, with instructions to implement the court's ruling, expeditiously.

Given the differing positions between the Seventh Circuit and the Eleventh Circuit on the combination and mixture of at-large and single member districts to solve voting rights violations, this may aid in urging this court to grant a Writ of Certiorari.

THE APPELLATE COURT'S RULING DID NOT SUPPORT THE MANIFEST WEIGHT OF THE EVIDENCE AND IT ABUSED ITS DISCRETION IN REVERSING THE DISTRICT COURT

The appellate court's ruling did not support the manifest weight of the evidence and the appellate court abused its discretion in reversing the district court. The appellate court ruled that the Plaintiffs McCoy and Perkins did not challenge the Park District's assertions that they cured all of the § 2 violations. They seemed to base their ruling on the fact that the Plaintiff did not produce the blatant examples shown in the City, where the mayor, a democrat, when there was a vote to break the tie, voted with the white republicans and never with the minority race democrats. While this kind of evidence may not have existed with the Park District, this should not have been interpreted that the § 2 violations had been cured. The record at the district court, taken as a whole, by unrefuted: testimony from the plaintiffs herein; pictures; and affidavits from the plaintiffs herein, had a litany of examples of continued § 2 violations.[2] The district court was closest to the situation and had many opportunities to assess whether there were violations. The district court ruled that the consent decree (which the appellate court completely vacated[3]) gave impermissible

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[2] In addition to their testimonies and pictures, the affidavits of McCoy's items #4 and Perkins' items #5, identified a litany of racial disparities relative to the Park District, while providing their remedies. (See A72)

[3] See *Perkins*, 47 F.3d 212, last paragraph in the order.

authority to the at-large elected Park District president; and because of the structure of the governance, the minority voters could not get access to the presidency. The court viewed this as the very aspect of the governance that was to help cure the § 2 violations, but in fact tended to foster the violation. The court had no choice but to seek a more complete remedy. It did not abuse its authority. The appellate court's decision was not supported by and was contrary to the evidence. This is additional reason for the court to grant certiorari.

CONCLUSION

Given the Park District's changing its governance without authority from the state laws; given the conflict between the Seventh Circuit initially not permitting the Park District to ignore its statutory requirements when providing a change in its governance, and later permitting the Park District to ignore its statutory requirements when providing a change in its governance; given the conflict between circuits to permit or not permit a mixture between at-large and single districts to foster remedies for voting rights violations; and lastly, given that the appellate court's ruling seemed to have been

against the manifest weight of the evidence; the court should permit certiorari.

Respectfully submitted,

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United States Court of Appeals,
Seventh Circuit.

Ron HARPER, Kevin Perkins, William Elliot, and Robert McCoy, Plaintiffs-Appellees, Cross-Appellants,
v.
CITY OF CHICAGO HEIGHTS and the Chicago Heights Election Commission,
Defendants-Appellants, Cross-Appellees,
Ron Harper, Kevin Perkins, William Elliot, and Robert McCoy, Plaintiffs-Appellees, Cross-Appellants,
v.
Chicago Heights Park District, Defendant-Appellant, Cross-Appellee,
and
David Orr, Cook County Clerk, Defendant-Appellee.
Nos. 98-2785, 98-2811, 98-2899, 98-3004, 98-3051, 98-3075, 99-2007, 99-2008, 00-1503, 00-1515[1]

Argued April 6, 1999
Decided July 27, 2000

Rehearing and Rehearing En Banc
Denied Aug. 28, 2000.

James C. Craven (argued), Donald M. Craven, Craven & Thornton, Springfield, IL, J. Timothy Eaton (argued), Ungaretti & Harris, Judith Reed (argued), Depaul University, Michael P. Seng, Robert L. Anderson, Krohn, Jenkins & Anderson, Chicago, IL, for plaintiffs-appellees.

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[1] There was also one other appeal initially brought by the Chicago Heights Park District (98-2798): this appeal was dismissed on the Park District's motion before briefing and oral argument.

Anthony A. Scariano (argued), Kelly A. Hayden, Scariano, Ellch, Himes, Sraga & Petrarca, Imelda Terrazino, Clausen Miller, David Lincoln Ader (argued), Ancel, Glink, Diamond, Cope & Bush, Donna M. Lach, Office of the State's Attorney of Cook County, James J. Casey, Ross & Hardies, Chicago, IL, for defendants-appellants.

Louise A. Lerner, Department of Justice, Civil Rights Division, Appellate Section, Washington, DC, for amicus curiae U.S.

Before KANNE, DIANE P. WOOD, and EVANS, Circuit Judges.

DIANE P. WOOD, Circuit Judge.

The wheels of justice have turned slowly in this voting rights case, which began more than a decade ago and continues to accrete new appeals almost by the month. The finding of a violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1971 et seq., has long since been established. Part of the case before us concerns the remedy for that violation. The district court issued an opinion on May 28, 1998, in which it ordered the implementation of a new election method that relies on cumulative voting. The rest of the many appeals consolidated with the case, up to and including those filed in the early spring of the year 2000, concern attorneys' fees. With respect to the remedy, we have reluctantly concluded that the district court moved too quickly in its understandable desire to put this case to rest. We therefore must reverse and remand. This in turn leads us to affirm in part and reverse in part the district court's grant of attorneys' fees and expenses.

I

The facts and procedural history of this case are set forth in detail in previous opinions. *See Harper v. City of Chicago Heights*, 824 F.Supp. 786 (N.D.Ill.1993); *Perkins v. City of Chicago Heights*, 47 F.3d 212 (7th Cir.1995); *Harper v. City of Chicago Heights*, 1997 WL 102543 (N.D.Ill. March 5, 1997). To summarize, in 1987 Ron Harper, Kevin Perkins, William Elliot, and Robert McCoy ("the Class") filed a class action against the City of Chicago Heights ("the City"), alleging that the at-large election method used to elect representatives to the City Council diluted the voting strength of African-Americans in violation of Section 2. In 1988, the Class filed an almost identical suit against the Chicago Heights Park District ("the Park District") aimed at changing the at-large election method used to select the Park District Board. (Although the Chicago Heights Election Commission and the Clerk of Cook County were also named as nominal defendants, these cases have been defended by the City and the Park District.) The district court ultimately consolidated the claims and certified the Class.

The Class wanted the court to order the replacement of the at-large voting systems with single-member districts and to award it attorneys' fees and costs. In February 1989, all parties moved for summary judgment. District Judge Nordberg denied the defendants' motion and granted in part and denied in part the Class's motion. He held that the Class had proven the three *"Gingles"* factors, see *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), that are threshold

requirements to a Section 2 vote dilution claim.[2] See *Harper*, 824 F.Supp. at 792-93. However, he concluded that genuine issues of material fact remained with regard to the second step to proving a vote dilution claim, the so-called "Senate Report Factors," see S.Rep. No. 417, 97th Cong., 2d Sess. 2, 28-29 (1982).[3] The cases were then reassigned to District Judge Will for trial.

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[2] Those three factors are the preconditions the Supreme Court set out in *Gingles* for the successful maintenance of a vote dilution claim under the Voting Rights Act. The minority group must be able to demonstrate (1) that the group is sufficiently large and geographically compact to constitute a majority in a single-member district, (2) that the group is politically cohesive, and (3) that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority's preferred candidate. 478 U.S. at 50-51, 106 S.Ct. 2752.

[3] The Report lists the following factors:

> (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> (2) the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

Judge Will conducted pretrial mediation, and a consent decree resulted. The decree abandoned the at-large election method and created a new system of government for both the City and the Park District. The new plan called for six single-member districts for the election of six City Council members and six park board commissioners, with a mayor and a park board president elected at large. Three of the districts would be majority white, two would be majority African-American, and one would have a majority population of African-American and Hispanic residents of voting age. The consent decree plan was based on the "strong mayor" form of government authorized by the Illinois Municipal Code, and it replaced a "commission" form of government. (The Code allows Illinois cities to select among several acceptable

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(5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

(6) whether political campaigns have been characterized by overt or subtle racial appeals;

(7) the extent to which members of the minority group have been elected to public office in the jurisdiction;

[(8)] whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and

[(9)] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.

Sen. Judiciary Comm. Rept. at 28-29.

forms of government. The "aldermanic" form is the basic form, see 65 ILCS 5/3.1, but cities may expand upon the aldermanic form by adopting the "commission," see 65 ILCS 5/4 *et seq.*, "managerial," see 65 ILCS 5/5 *et seq.*, or "strong mayor," see 65 ILCS 5/6 *et seq.*, forms. Cities may normally adopt, alter, or repeal a form of government only through a referendum. Ill. Const. Art. VII, § 6(f)).

In a development that would later prove problematic, the consent decree plan departed from the statutory "strong mayor" form in several respects. First, instead of five wards with two aldermen each, the decree called for six wards with one alderman each. Moreover, the mayor was authorized to appoint a city clerk and treasurer (persons usually elected at large), as well as administrative assistants and a budget and finance director (positions usually reserved for cities larger than Chicago Heights). The consent decree plan also modified the statutorily defined form of government for Illinois Park Districts. See 70 ILCS 1205/1-1 *et seq.* Rather than five commissioners elected at large, the decree called for six commissioners, one to be elected from each ward.

Judge Will approved the consent decree over the objections of Kevin Perkins and Robert McCoy ("the Individual Plaintiffs"), who had by this time split from their fellow class representatives. Perkins and McCoy thus appealed from the order entering the consent decree (with Harper, Elliott, the City, the Park District, and certain nominal defendants listed as appellees). See *Perkins*, 47 F.3d 212. This court found merit in their challenge and held that the district court should not have approved a consent decree that overrides state law without making

"properly supported findings that such a remedy is necessary to rectify a violation of federal law." *Id.* at 216 (emphasis removed). Absent a finding of a violation of federal law, a municipality may modify a statutorily prescribed form of government only through a referendum. We vacated the entire decree and remanded for further proceedings.

By the time the decision in *Perkins* was handed down (February 7, 1995), the City's 1995 general election was approaching. Judge Will ordered that the election should take place as scheduled, but in recognition of this court's concerns, he also directed that the consent decree should be submitted for voter approval through a referendum. At the same time, he noted that the Park District had passed a resolution adopting the new form of governance specified in the decree and thus that no further action was necessary legally to establish the new Park District structure. On November 7, 1995, Chicago Heights held a referendum and the voters approved the new form of city government – which was modeled on and identical to the form adopted in the earlier consent decree. Judge Will passed away shortly thereafter, and these cases, still on remand to the district court, were reassigned to District Judge Coar.

Following this court's instructions on remand, Judge Coar first reiterated that the old, at-large election method violated Section 2, and he made particularized findings to support this determination. See *Harper*, 1997 WL 102543, at *12. He noted that Judge Nordberg had found the *Gingles* factors satisfied; he then considered evidence and found that the Senate Report Factors also pointed to a Section 2 violation. Importantly, neither the City nor the

Park District have challenged this finding of liability in the present appeal. Next, Judge Coar considered the appropriateness of the remedy adopted first in the consent decree and later through referendum. (We refer in this opinion to the remedy Judge Coar evaluated for the City as the "referendum system," and to the remedy applicable to the Park District as the "resolution system," to reflect the fact that the systems under which both entities had operated at the outset of this litigation had been replaced by remedial measures.) Expressing concern that the referendum system preserved rather than remedied the effects of the former unlawful at-large laws, he ordered the parties to "propose new governmental structures and voting maps designed to remedy the underlying Voting Rights Act violations." Judge Coar allowed the City, the Park District, and the Class to rely on the referendum system for their proposals.

As requested, the parties submitted their proposals. The City, the Park District, and the Class reaffirmed their support for the referendum system, disagreeing only on where the lines dividing the six districts should be drawn. Perkins and McCoy objected to the solution adopted by consent and later by referendum, arguing that the six-member structure negates the power of the minority representatives because (1) in practice tie votes have frequently resulted, with the mayor (who is still elected at large) usually breaking the tie by voting with the white aldermen; and (2) the mayor may exercise veto power, which can be overridden only by a 3/5 majority of the council (*i.e.* four of the six aldermen). According to Perkins and McCoy, "the mayor now acts as a seventh alderman – indeed, a super alderman, who has the power

to appoint two important City positions and who is not elected from a single-member district, but rather, is elected at-large."

Perkins and McCoy proposed an "aldermanic" form of government with seven single-member districts and a mayor, city clerk, and treasurer elected at large. For reasons that are unclear, their plan too departed somewhat from the statutory aldermanic form, which calls for seven wards with two aldermen each for cities whose population is between 20,000 and 50,000. See 65 ILCS 5/3.1-20-10 & 5/3.1-20-15. Under the aldermanic form of government, the mayor votes in only two circumstances: to break a tie (a situation that simple mathematics indicates is less likely to occur with an odd number of aldermen), or where a super-majority is required by law. Perkins and McCoy proposed that lines be drawn to create three majority-white districts, two majority-black districts, one majority-Hispanic district, and one district in which no single group would be in the majority. For the Park District, Perkins and McCoy proposed a seven-member board (whose members would be elected from the seven districts), which would in turn elect a president from within its ranks.

After reviewing the proposals before him, Judge Coar rejected the referendum system because it still did not remedy the original Section 2 violation. See *McCoy v. Chicago Heights*, 6 F.Supp.2d 973, 981 (N.D.Ill.1998). Noting that "the parties do not explain how a government structure where the tie-breaking vote is elected at-large remedies a voting rights violation predicated on the fact that the at-large system enhanced discrimination against African-Americans," *id.* at 980, Judge Coar found his

concerns justified by the experience under that system that was accruing, which showed that where a tie has resulted in the city council, the mayor has voted with the white aldermen. (With an even number of aldermen, moreover, ties were not uncommon.) Judge Coar also noted that the mayor's authority was further enhanced by allowing him to appoint the city clerk and treasurer, as well as administrative assistants and directors. *Id.* None of those powers would have belonged to him under the statutory "strong mayor" government. Finally, Judge Coar criticized the use of an at-large method to elect the Park District board president. *Id.* Illinois law provides that the board president may be elected by the board members, but Judge Coar believed that the use of an at-large election is particularly problematic in a seven-member board structure where the president has the power to cast tie-breaking votes. *Id.*

Although Judge Coar suggested that the Perkins and McCoy proposal was legally adequate, *id.* at 981, he did not embrace it without qualification. He was concerned that a plan that requires the drawing of district lines would be the frequent subject of constitutional attack, recognizing that his task was to steer between the Scylla of racially based district lines, e.g., *Abrams v. Johnson*, 521 U.S. 74, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997), *Bush v. Vera*, 517 U.S. 952, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996), and *Shaw v. Hunt*, 517 U.S. 899, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996), and the Charybdis of ineffectual Section 2 remedies. Noting the support for cumulative voting expressed by Justices Scalia and Thomas in Justice Thomas's concurring opinion in *Holder v. Hall*, 512 U.S. 874, 912, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994), Judge

Coar decided to try that approach. Accordingly, instead of dividing the City into seven districts, the court's order requires the establishment of an at-large system that uses cumulative voting. This came as a surprise to the parties, who had not proposed any such structure, but the court cited to literature indicating that cumulative voting has the benefits of remedying the vote dilution problem while avoiding the constitutional challenges that afflict the drawing of district lines. 6 F.Supp.2d at 982-83. Judge Coar found this benefit significant given the line of Supreme Court decisions just mentioned, and also given the practical fact that any districting plan he approved would have to be redrawn following the 2000 census.

II

The City, the Park District, and the Class attack the district court's holding on several fronts. First, they argue that the court erred when it found that the referendum system did not remedy the Section 2 violation. Because the modified "strong mayor" plan adopted by the voters in the referendum is a legally adequate remedy, they maintain, the district court was required to accept it. They also suggest that the referendum results can be set aside only if they would independently violate Section 2, and that we should not be worrying about their capacity to cure the earlier Section 2 violation. Second, they argue that even if the referendum plan is an inadequate remedy, the district court's cumulative voting plan is not an acceptable alternative. Finally, the City and the Park District argue that all previous grants of attorneys's fees must be revisited. We address these contentions in turn.

A.

Standing behind the district court's judgment is the earlier finding – unchallenged, as we said – that the at-large system violated Section 2 of the Voting Rights Act. We think it was correct for the court to ask whether the replacement system eventually approved through referendum would remedy the violation; there was no need for the court to view it as if it had emerged from thin air. See *Harvell v. Blytheville Sch. Dist. # 5*, 71 F.3d 1382, 1386 (8th Cir.1995); *Jenkins v. Red Clay Consolidated Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1115-16 (3d Cir.1993). When a Section 2 violation has been found, the district court "must, wherever practicable, afford the jurisdiction an opportunity to remedy the violation first, . . . with deference afforded the jurisdiction's plan if it provides a full, legally acceptable remedy. . . . But if the jurisdiction fails to remedy completely the violation or if a proposed remedial plan itself constitutes a § 2 violation, the court must itself take measures to remedy the violation." *Dickinson v. Indiana State Election Bd.*, 933 F.2d 497, 501 n. 5 (7th Cir.1991) (citation and quotations omitted). We review the district court's factual findings regarding a Section 2 violation for clear error and its legal conclusions *de novo*. *Gingles*, 478 U.S. at 79, 106 S.Ct. 2752. See also *Cousin v. Sundquist*, 145 F.3d 818, 822-23 (6th Cir.1998), *cert. denied* 525 U.S. 1138, 119 S.Ct. 1026, 143 L.Ed.2d 37 (1999).

The district court recognized that courts have relied upon the three factors set forth in *Gingles*, followed by the nine "Senate Report Factors," in order to decide whether or not a violation of Section 2 exists. See, *e.g.*, *Jenkins v. Manning*, 116 F.3d 685, 690-92 (3d Cir.1997); *Dillard v. Crenshaw County, Ala.*, 831 F.2d 246 (11th Cir.1987). We

have no reason here to question that framework. Using it, Judges Nordberg and Will evaluated the original plan proposed to remedy the violation, but Judge Coar did not perform a similarly detailed evaluation of the referendum plan, largely because no one gave him the information he would have needed to do so. See 6 F.Supp.2d at 978. Instead, he decided that the findings that made the original system infirm were equally applicable to the referendum system. He noted that the problem with the old system was its use of at-large elections, which, given the local political environment, put the positions to be filled beyond the reach of minority voters. Under the plan adopted by the referendum, only the tie-breaker is elected at large, but taken as a whole this had the same diluting effect as the original at-large system. It was also significant that, because the voters had adopted the plan by referendum, the City had been operating under the plan for some time. This gave the court concrete evidence of the plan's effect in reality. That evidence showed that the at-large mayor voted with the white aldermen in the cases where a city council vote resulted in a tie. The court did not make any separate findings about the operation of the plan in Park District elections or governance.

The evidence of the mayor's pattern of voting in tie-breaking situations, taken with the likelihood of ties on an even-numbered council, is enough to support the district court's conclusion that the referendum system did not adequately address the acknowledged problem in the City elections. It is true, as the City points out, that the Supreme Court has held that at-large procedures are not unconstitutional *per se*. See *Rogers v. Lodge*, 458 U.S. 613, 617, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982); see also *United*

States v. Dallas County Comm., 850 F.2d 1433, 1438 (11th Cir.1988) ("[A]t-large procedures that are discriminatory in the context of one election scheme are not necessarily discriminatory under another scheme.") (citation and quotations omitted). Nonetheless, we are beyond that point here, given the state of this litigation. Appellate review might have been somewhat easier if the district court had discussed each of the *Gingles* and Senate Report Factors in its evaluation of the limited use of at-large procedures found in the referendum system, but the critical question in the end is whether the court's finding of fact that the newly enacted system would still discriminate against minority voters was clearly erroneous. The court pointed to the evidence that led it to conclude that vote dilution would still rise to the level of a Section 2 violation. Not everyone would agree, but we find the court's conclusion to be within the range of permissible inferences from this evidence, and hence not clearly erroneous. We therefore affirm the district court's rejection of the referendum system insofar as it is applied to the City.

With regard to the Park District, the absence of evidence of continuing discrimination is significantly more troubling. The Park District argues that the resolution system (derived like the referendum system from the consent decree) has solved its Section 2 violation: the board president regularly votes with a bloc consisting of two African-American board members, one Hispanic, and one white; further, capital improvement expenditures in African-American and Hispanic districts have increased substantially, suggesting that their residents' concerns are being addressed. Neither the district court's opinion nor the *McCoy* and *Perkins* brief addresses these contentions.

Because the burden of proving a Section 2 violation lies with the minority group contesting the current system, see *Gingles*, 478 U.S. at 50-51, 106 S.Ct. 2752, this lack of rebuttal evidence dooms the challenge to the use of the plan in the Park District. We reverse the district court's determination that the plan, as applied to the Park District, is not a legally adequate remedy.

B.

The question of the appropriateness of the court's chosen remedy is also a knotty one. On this point, our review is for abuse of discretion. See *Connor v. Finch*, 431 U.S. 407, 415, 97 S.Ct. 1828, 52 L.Ed.2d 465 (1977) (appellate review of a district court's choice of remedy in a voting rights case is for abuse of discretion). Even though this gives great leeway to the judge who is closest to the problems, we are compelled to find here that the remedy for the City crafted by the court cannot stand at this time.

The district court's plan suffers from the same procedural flaw as did the consent decree when it was first presented to this court: the court's plan modifies the election methods set forth in the Illinois Municipal Code without either going through the statutorily required procedures for making such changes to electoral methods or making a judicial finding that it was necessary to make these changes in order to comply with federal law. As this court explained in *Perkins*, after a finding of a Voting Rights Act violation, the parties were free to adopt and the district court to approve

> one of the alternative forms of government provided by Illinois law. However, the parties cannot modify the chosen form simply at-will. . . . Any modifications which must be accomplished through a referendum cannot be made by the consent decree unless the court finds that the statutory provisions would violate federal law and that such changes are necessary to ensure compliance with federal law.

47 F.3d at 217.

The procedural holding in *Perkins*, while addressed to a slightly different problem, is equally applicable here, though we note that nothing in our earlier opinion disapproved of cumulative voting in the abstract. The Illinois Municipal Code makes available to cities a variety of election methods. The district court should either have selected one of these methods or found that the Illinois options violate federal law. Instead, as it had done before, it opted for a hybrid system without submitting that plan to the voters, as Illinois law would require, and without explaining why one of the State's authorized systems would not do the job. Although the Municipal Code allows for cumulative voting, it specifies that a city is to be divided into districts (not less than two and not more than six) and that each district is entitled to three aldermen. 65 ILCS 5/3.1-15-30 & 5/3.1-15-35. Without a finding that the Code's cumulative voting method violates federal law, the district court modified the plan to call for the city-wide election of seven council members.

The district court's plan also suffers from a failure to respect the City's preference for single-member districts.

The Supreme Court has held that in fashioning an electoral system to remedy a voting rights violation, courts "should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the . . . plans proposed by the state legislature, whenever adherence to state policy does not detract from the Federal Constitution." *White v. Weiser*, 412 U.S. 783, 795, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973). Accordingly, when a legislative body fails to offer an acceptable remedy, "the court, in exercising its discretion to fashion a remedy that complies with § 2, must to the greatest extent possible give effect to the legislative policy judgments underlying the current electoral scheme or the legally unacceptable remedy offered by the legislative body." *Cane v. Worcester County, Md.*, 35 F.3d 921, 928 (4th Cir.1994).

Here, the City has demonstrated a clear preference for single-member districts. It proposed a remedial plan that relies on single-member districts and, in doing so, made a policy judgment about which electoral schemes are best suited for the locality. We should defer to the City's plan to the extent possible as long as it does not violate federal law. See *Cane*, 35 F.3d at 927. Although the district court found that the referendum system was inadequate, it did not find that *any* use of single-member districts violates federal law.

The United States, appearing as *amicus curiae*, defends the district court's plan on the ground that, under Illinois law, cumulative voting is an accepted electoral practice. Thus, the United States argues, while the district court's plan may have violated the City's preference for single-member districts, the State has no such preference. We find this distinction unconvincing. First,

the United States overstates the popularity of cumulative voting in Illinois: although cumulative voting is lawful under the Municipal Code, the use of single-member districts is an equally acceptable electoral practice. Moreover, although *Weiser* talks of deference to "state policy," a state plan was under attack in *Weiser*, and its holding is not so limited. The City proposed and must function under the remedial plan and accordingly its judgments are entitled to deference.

It is somewhat troubling that the City has not articulated why it prefers single-member districts over cumulative voting, but this is not an ironclad requirement for public bodies as long as the entity's actual preference can legitimately be inferred from facts on the record. It is obviously true that deference to legislative policy judgments is predicated on the legislature actually having made a policy judgment rather than an arbitrary choice. But we are satisfied that the City did so. Prior to the district court's order, the parties had never thought of cumulative voting. In the absence of a finding that cumulative voting is the only legally viable remedy, the City should have an opportunity to consider the merits and deficiencies of cumulative voting before that system is imposed upon it. We emphasize that our decision should not be understood as a condemnation of cumulative voting. Cumulative voting is, as the Illinois Municipal Code makes clear, a lawful election method that may be implemented under circumstances demonstrating suitable deference to the legislative body. It also has the virtues the district court identified:

> [R]ather than using race as a proxy for voting preference, such a system allows voters to draw

> their own jurisdictional boundaries, decide which local governments were most important to them, and allocate their votes accordingly. . . . All minority groups may potentially benefit from such a system – not just racial minorities . . . . Indeed, cumulative voting does not compartmentalize voters according to their race.

6 F.Supp.2d at 982-83 (quotations and internal citations omitted).

Because we reject the district court's remedy on other grounds, we need not address the City's contention that the decision to increase the number of City Council members from six to seven violates the rule of *Holder v. Hall, supra,* which holds that the size of a governing body is not subject to a Section 2 vote dilution claim.

III

The remaining issues pertain to the district court's orders awarding attorneys' fees and expenses pursuant to Section 14(e) of the Voting Rights Act, 42 U.S.C. § 1973(1)(e), and the Civil Rights Attorney's Fee Award Act, 42 U.S.C. § 1988. The first award of attorneys' fees covers the period of time between the beginning of the suit and the entry of the consent decree. On December 15, 1994, Judge Will entered an order that awarded Class Counsel $337,777.98, with $297,930.65 attributable to the City and $39,847.33 to the Park District. This award included a 10% enhancement "to reflect the excellent results achieved." Although this court vacated the December 15 award along with the consent decree, on November 28, 1995, after the referendum, Judge Will re-entered the fee award. The Park District paid its portion.

The City initially appealed, but then reconsidered and asked us to dismiss the appeal. We granted the motion to dismiss, so there is currently no dispute as to the fees awarded by Judge Will.

Pending, however, are challenges to Judge Coar's order awarding fees and expenses. On March 26, 1999, Judge Coar awarded Class Counsel $55,665 to cover fees and expenses incurred after the entry of the consent decree. (On April 21, 1999, Judge Coar amended the order, increasing Class Counsel's award to $65,547.50.) Also on March 26, Judge Coar awarded Perkins and McCoy's attorneys $192,803.75; the City is responsible for $100,868.12 and the Park District for $91,935.63. Then on February 9, 2000, the court awarded fees in the amount of $11,065 to the attorneys representing *Perkins* and *McCoy*, for work done prosecuting their fee petition. The award does not specify how the fee award breaks down between the City and the Park District.

Both the City and the Park District filed appeals from all these orders; this court has consolidated the appeals that reached us after oral argument in this case with the original appeals. Although the City initially challenged Judge Coar's awards of attorneys' fees to the plaintiffs' counsel, it later asked that that appeal be dismissed. We granted the motion. Thus, remaining before us are the City's and the Park District's appeals of Judge Coar's March 26, 1999, fee award, which also provided the basis for the February 9, 2000, award of attorneys' fees to Perkins and McCoy.

First, the status of Perkins and McCoy as "prevailing parties" is at issue. The defendants then challenge the reasonableness of the fees awarded.

Section 1988 states that in a civil rights action, "the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of its costs." Because Perkins and McCoy's status as a prevailing party involves elements of legal analysis, our review is *de novo*. See *Jaffee v. Redmond*, 142 F.3d 409, 412-13 (7th Cir.1998). The Supreme Court has stated that the statutory threshold for obtaining attorneys' fees under Section 1988 is "generous." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). To determine if a party is "prevailing," courts ask whether:

> the plaintiff has succeeded on any significant issue in litigation which achieved some of the benefit the parties sought in bringing suit. . . . The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute.

Texas Teachers Ass'n v. Garland Independent Sch. Dist., 489 U.S. 782, 791-93, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989) (citation and quotations omitted). Once a plaintiff qualifies for a fee award by meeting this threshold, "the degree of the plaintiff's overall success goes to the reasonableness of the award . . . , not to the availability of a fee award *vel non*." *Id.* at 793, 109 S.Ct. 1486.

Perkins and McCoy are prevailing parties insofar as they succeeded in their goal of having vacated what they regarded as an ineffectual consent decree. That this court

did not vacate the decree based upon the precise arguments they raised, as the Park District points out, does not matter. They convinced this court that the decree was improperly entered, thereby succeeding on a "significant issue in [the] litigation." *Texas Teachers*, 489 U.S. at 791, 109 S.Ct. 1486. Recognizing this, the City chose not to appeal Perkins and McCoy's prevailing party status so long as the substantive aspects of this case are upheld on appeal. (Because we are reversing some aspects of Judge Coar's decision, we note that the City has reserved its right to object to Perkins and McCoy's status in later proceedings.) The Park District also argues that it should not be liable for any of the fees incurred by Perkins and McCoy, because they did not appeal the portions of the consent decree that applied to the Park District. See *Perkins*, 47 F.3d at 217. But the six-district structure also affected the Park District, and the final judgment of this court vacated the entire decree, not just parts of it.

These facts also persuade us that the Park District is being too particular when it asserts that Perkins and McCoy's earlier appeal was not directed against it, and that it therefore should not be responsible for paying fees associated with that appeal. It is true that most of the appeal related to the City, but not all of it did. Judge Coar correctly recognized this on remand, when he reconsidered both the provisions applicable to the City and those applicable to the Park District. The greater problem for Perkins and McCoy is that we have now rejected their challenge to the Park District resolution that implements the earlier consent decree. The fees to which they are entitled from the Park District must therefore be reconsidered. The district court on remand should take into

account both whatever contributions they made to the liability findings against the Park District, and their lack of success in changing the remedy for the Park District.

Finally, both the City and the Park District challenge the reasonableness of the district court's fee award to Perkins and McCoy. They allege that (1) counsel for Perkins and McCoy failed to support their claimed hourly rates with sufficient evidence that the rates are reasonable; (2) counsel for Perkins and McCoy used reconstructed time records rather than records made at the time the services were rendered; and (3) counsel for Perkins and McCoy relied on "cluster billing," i.e. grouping several different activities into one description, thus making it impossible to determine whether the individual activities were a reasonable expenditure of time. The defendants maintain that these failings made it impossible for the district court to determine the reasonable value of the services provided. The City also raises a number of challenges to individual entries in the fee petitions. For example, it argues that one of the attorneys for Perkins and McCoy spent an unreasonable amount of time meeting with his clients.

We find no abuse of discretion in the court's decision to accept the proposed hourly rates. The reasonable hourly rate (or "market rate") for lodestar purposes is "the rate that lawyers of similar ability and experience in their community normally charge their paying clients for the type of work in question." *Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 555 (7th Cir.1999) (quotations and citations omitted). The attorneys for Perkins and McCoy supported their proposed hourly rates with their own affidavits confirming the reasonableness of these rates as

well as affidavits from attorneys practicing in the field. While an attorney's self-serving affidavit alone cannot establish the market rate for that attorney's services, such affidavits in conjunction with other evidence of the rates charged by comparable lawyers is sufficient to satisfy the plaintiffs' burden. *Id.*

As to the reasonableness of the hours expended, when a fee petition is vague or inadequately documented, a district court may either strike the problematic entries or (in recognition of the impracticalities of requiring courts to do an item-by-item accounting) reduce the proposed fee by a reasonable percentage. See *Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc.*, 776 F.2d 646, 651, 657-58 (7th Cir.1985); see also *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (if plaintiff fails to document hours adequately, court may reduce award accordingly). Whichever option the district court chooses, it is required to "provide a concise but clear explanation of its reasons for the fee award" that is sufficient to permit appellate review. *Ohio-Sealy Mattress*, 776 F.2d at 658, quoting *Hensley*, 461 U.S. at 437, 103 S.Ct. 1933.

Perkins and McCoy acknowledge that their bills were compiled in part from contemporaneous time records and in part reconstructed. This use of reconstructed records does not doom their petition, as there is no per se rule requiring the submission of contemporaneous time records in the Northern District of Illinois. However, Judge Coar, who concluded that their time records "appear to be contemporaneous," did not address the reliance on reconstructed records. As it is within a district court's power to reduce a fee award because the petition was not supported by contemporaneous time records,

see, *e.g.*, *Shakman v. Democratic Organization of Cook County*, 634 F.Supp. 895, 899 (N.D.Ill.1986); *Rybicki v. State Bd. of Elections of State of Illinois*, 584 F.Supp. 849, 861 (N.D.Ill.1984), we reverse and remand for reconsideration of this issue.

For the reasons discussed above, we AFFIRM the district court's holding that the current election method violates Section 2 of the Voting Rights Act as applied to the City; however, we REVERSE the district court's remedy and REMAND to the court to craft a suitable remedy. We REVERSE the district court's holding that the current election method violates Section 2 as applied to the Park District. We VACATE in part and AFFIRM in part the March 26, 1999, order and the February 9, 2000, order granting attorneys' fees and expenses. Specifically, we AFFIRM the district court's award of attorneys' fees to Perkins and McCoy from the City and VACATE and REMAND for calculation of the precise amount of fees. We VACATE and REMAND the award of fees to Perkins and McCoy from the Park District; should the district court determine on remand that Perkins and McCoy are entitled to fees for their suit brought against the Park District, it should reconsider the amount, taking into account this opinion. Finally, we do not disturb the award of fees to plaintiffs' counsel – the Park District did not appeal that award and we dismissed the City's appeal of that award on the City's motion. All parties shall bear their own costs attributable to this appeal.

United States District Court
N.D. Illinois,
Eastern Division
Robert McCOY, Kevin Perkins, Ron Harper and William Elliot, Plaintiffs,

v.

CHICAGO HEIGHTS, Chicago Heights Election Commission, Defendants.
Robert McCOY, Kevin Perkins, Ron Harper and William Elliot, Plaintiffs

v.

CHICAGO HEIGHTS PARK DISTRICT and the Cook County Clerk, Defendants.

Nos. 87 C 5112, 88 C 9800.

May 28, 1998

Michael P. Seng, John Marshall Law School, Chicago, IL, J. Timothy Eaton, Theodore E. Harman, Ungaretti & Harris, Chicago, IL, James C. Craven, James C. Craven, P.C., Springfield, IL, for Plaintiffs in 87 C 5112.

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Anthony G. Scariano, Kelly Hayden, Scariano, Kula, Ellch & Himes, Chtd., Chicago Heights, Il, Cook County State's Atty., Chicago, IL, for Defendants in 88 C 9800.

MEMORANDUM OPINION AND ORDER

COAR, District Judge.

Currently pending are the parties' proposals for remedying the Section 2 Voting Rights Act violations found previously by this court. For the reasons stated in this Memorandum Opinion and Order, this court denies the proposals of the City, the Park District, and the class plaintiffs and accepts, in part, the proposal of the individual plaintiffs. As described herein, this court orders that the individual plaintiffs' proposal will be modified by implementing a system under which the aldermen and Park District members are elected at-large utilizing cumulative voting.

I. Background

The instant case originated in 1987 and 1988 when the plaintiff class filed complaints on behalf of African-American voters of Chicago Heights against the defendants City of Chicago Heights ("City" or "Chicago Heights"), the Chicago Heights Election Commission, the Chicago Heights Park District ("Park District"), and Stanley Kusper, the Clerk of Cook County. The plaintiffs alleged that the non-partisan, at-large elections in Chicago Heights City Council and the Chicago Heights Park District Board violated Section 2 of the Voting Rights Act

of 1965, 42 U.S.C. § 1971 *et seq.*, by diluting the opportunity of African-Americans to elect representatives of their choice. This case has a long and complicated procedural history and facts, which are reviewed in earlier opinions and therefore not necessary to review in detail here. *See Harper v. City of Chicago Heights*, 824 F.Supp. 786 (N.D.Ill.1993) (Will, J.); *Perkins v. City of Chicago Heights*, 47 F.3d 212 (7th Cir.1995); *Harper v. City of Chicago Heights*, 1997 WL 102543 (N.D.Ill. March 5, 1997) (Coar, J.).

As discussed in earlier opinions, pursuant to a consent decree approved by Judge Will on May 24, 1994, the City and the Park District abandoned the at-large election method and created a new system of government. "[T]he new plan was designed around six single member districts for the election of six single member districts for the election of six City Council members and six Park Board Commissioners, with a mayor and Park Board president[1] elected at-large." *Harper*, 1995 WL 706898 at *1. The form of government prescribed in the consent decree was a deviation from the forms of government provided for in the Illinois Municipal Code. *See* discussion, infra, Part II.A.2, II.B.2.

Two of the named plaintiffs, Kevin Perkins and Robert McCoy (hereinafter "Perkins and McCoy" or "individual plaintiffs"), appealed the entry of the consent decree to the Seventh Circuit Court of Appeals, which vacated the decree and remanded the case. *See Perkins*, 47 F.3d at 218. The Seventh Circuit found that the parties did

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[1] The Park Board president serves as the seventh Board member.

not have the ability to consent to modifications in statutorily prescribed forms of government absent a finding that "such a remedy is necessary to rectify a violation of federal law. . . . Without such findings, however, parties can only agree to that which they have the power to do outside of litigation." *Id.* at 216. Subsequent to the Seventh Circuit's February 7, 1995 decision, on November 7, 1997, the form of government contained in the consent decree was approved by Chicago Heights voters in a referendum.

On remand, this court found that Judge Will's November 29, 1995 order and the stipulation and agreement satisfy the Seventh Circuit's directive to determine whether there was a violation of the Voting Rights Act. *See Harper*, 1997 WL 102543 at *3. This court further found that, under the at-large system previously in place, "few African-American candidates of choice were ever elected to the city council; the electorate was racially polarized; the at-large election system enhanced discrimination against African-Americans; and African-Americans were denied access to the slating process." *Id.* at *12. In addition, the evidence before this court demonstrated that African-Americans in Chicago Heights "bear the effects of historic discrimination in the areas of housing, employment, education, and public accommodations." *Id.* at *10. Accordingly, this court concluded that it was necessary to determine whether the consent decree sets forth a valid remedy for the City's and the Park District's Section 2 violations. The fact that the form of government provided in the consent decree has been "approved" pursuant to a referendum does not relieve this court of its

obligation to decide whether the consent decree remedies the underlying violation. *See id.* at *5.

This court ordered the parties to propose new governmental structures and voting maps designed to remedy the voting rights violations. *See id.* at *14. Subsequently, the City, the Park District, the class plaintiffs, and Harper and McCoy submitted memoranda and documents proposing new forms of government for the City and the Park District.

II. Discussion

A. City of Chicago Heights

1. Forms of City Government

The form of government that was in place when the voting rights violation occurred was the commission form of government, which provided for a mayor and four council members elected at-large. *See* 65 ILCS 5/4-3-1. Under the commission form of government, the four candidates receiving the highest number of votes are elected to the council and elections are held every four years. Cumulative voting was not permitted under the Chicago Heights voting system. *See Harper*, 824 F.Supp. at 793 n. 4 (Ex. A, Report and Recommendation, Nordberg, J.).

The Illinois Municipal Code provides for three other forms of government beyond the commission form: (1) aldermanic; (2) managerial; and, (3) strong mayor. *See* 65 ILCS 5/1-1-1 *et seq.* The "aldermanic" form of government is the basic form of government available to cities in Illinois and is outlined in Article 3.1 of the Municipal Code. Cities may choose to expand upon the aldermanic

form of government by adopting the commission, managerial, or strong mayor forms of government. The numbers of aldermen prescribed by the different forms of government vary according to size of the city.[2] Chicago Heights has a total population of 33,072.[3]

Under the aldermanic form of government, cities the size of Chicago Heights are divided into seven wards, with two aldermen per ward. *See* 65 ILCS 5/3.1-20-10. The number of aldermen may be reduced to one per ward pursuant to a referendum. *See* 65 ILCS 5/3.1-20-20. The Code also provides for the adoption of a minority representation plan as a modification to the traditional aldermanic form of government. *See* 65 ILCS 5/3.1-15-35.

The managerial form of government provides for seven wards, with two aldermen per ward, in a municipality the size of Chicago Heights. *See* 65 ILCS 5/5-2-2. Under the strong mayor form of government, a city the size of Chicago Heights is allocated five wards, with two alderman from each ward. *See* 65 ILCS 5/6-3-3. The aldermanic, managerial, and strong mayor forms of government all provide for a city clerk and treasurer elected at-large. *See* 65 ILCS 5/3:1-15-5; 65 ILCS 5/5-2-19; 65 ILCS 5/6-3-3.

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[2] The commission form of government is an exception, providing for four commissioners regardless of the population of the city.

[3] *See* Perkins and McCoy Mem. at 2, citing Bureau of Census, Statistical Abstract, 1990.

2. Consent Decree

The type of strong mayor government adopted by the City in the consent decree is a modification of that outlined in the Municipal Code. First, instead of five wards with two alderman each as prescribed by Illinois law for the strong mayor government, the City has six districts with one alderman elected from each. *See* 65 ILCS 5/6-3-5 ("Every city shall have as many wards as one-half the total number of aldermen to which the city is entitled."). In addition, instead of electing the clerk and treasurer at-large, *see* 65 ILCS 5/6-3-3, these officers are appointed by the mayor and approved by the City Council. Also, the mayor currently appoints administrative assistants and a budget and finance director.[4]

B. Chicago Heights Park District

1. Forms of Government for Park District

The Illinois Park District Code provides that the five candidates who receive the most votes in an at-large election are elected commissioners of the Park District. *See* 70 ILCS 1205/2-9. By referendum or resolution of the Board, the Board may be comprised of seven commissioners.[5] *See* 70 ILCS 1205/2-10a. A Park District Board president may be elected at-large, *see* 770 ILCS 1250/2-15, or

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[4] The appointment of a budget and finance director is only statutorily authorized in the strong mayor form of government for cities of 50,000 or more. *See* 65 ILCS 5/6-4-15.

[5] In a district where a seven-member board is created, it may later be reduced to five members by referendum. *See* 70 ILCS 1205/2-10a.

elected from within their members by the elected commissioners, *see* 70 ILCS 1205/4-8. The Board president serves as a member of the board with the power to preside at meetings and call special Board meetings:

> The president of any park district shall preside at all meetings of the board, and shall call special meetings thereof of his own motion or on request of two or more of the members, and in case of a special meeting shall cause a notice to be given to all members as provided by the rule of said board. He shall have the right to vote upon all questions coming before the board and shall be a member thereof.

70 ILCS 1205/4-9.

2. Consent Decree

The consent decree made the following changes to the Park District governmental structure that was in place at the time of the voting rights act violations: the number of Board members is increased from five to seven; the terms are decreased from six to four years; six of the board members are elected from six wards rather than at-large; and, the Board president is elected at-large rather than by the other board members. As is clear from the discussion in the previous subsection the governmental structure provided for the Park District in the consent decree is a modification of the statutorily prescribed form. *See Perkins*, 47 F.3d at 215. In particular, the Illinois Park District Code does not allow for Board members to be elected from individual districts.

C. Fashioning a Remedy

1. Question Under Review

This court must now decide whether the form of government put in place as a result of the consent decree and subsequent referendum provides a complete and adequate remedy to the Section 2 violation found in this case. As an initial matter, the defendants argue that the proper focus for this court is not whether the new form of government remedies the prior violation of the Voting Rights Act, but rather whether the new form of government is, itself, a violation of the Voting Rights Act. (City Mem. at 11.) According to the defendants, absent a determination that the system implemented by the consent decree and referendum constitutes a separate violation of the Voting Rights Act, this court may not disturb the present form of government. However, the defendants have misread this court's earlier opinion. *See Harper*, 1997 WL 102543 at *12. In that opinion, this court found that the previous government did violate the Voting Rights Act and therefore this court must review de novo whether the form of government detailed in the consent decree is an adequate remedy.

The fact that the present form of government was approved by the voters in a popular referendum does not satisfy the defendants' burden on review. As the Supreme Court has held:

> An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly

> the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act.

Lucas v. Forty-Forth General Assembly of Colorado, 377 U.S. 713, 736, 84 S.Ct. 1459, 1473-377, 12 L.Ed.2d 632 (1964). *See also Harvell v. Blytheville School Dist.*, 126 F.3d 1038, 1040 (8th Cir.1997) ("The district court need not defer to a state-proposed remedial plan, however, if the plan does not completely remedy the violation or if the plan itself violates Section 2 of the Act.") (citing *Williams v. City of Texarkana, Ark.*, 32 F.3d 1265, 1268 (8th Cir.1994)).

2. Standard for Judicial Remedy

"Once a right and a violation has been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *U.S. v. Paradise*, 480 U.S. 149, 183-84, 107 S.Ct. 1053, 1072-74, 94 L.Ed.2d 203 (1987) (internal quotations and citations omitted). "In fashioning a remedy in redistricting cases, courts are generally limited to correcting only those unconstitutional aspects of a state's plan." *League of United Latin American Citizens v. Clements*, 999 F.2d 831, 847 (5th Cir.1993) (citing *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982)). Therefore, any remedy ordered by the court must be a tailored remedial response to illegality. *See Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). *See also Dickinson v. Indiana State Election Bd.*, 933 F.2d 497, 501 n. 5 (7th Cir.1991) ("[A]ny court remedy must be

narrowly tailored to include only those measures necessary to cure the effect."). In fashioning a remedy, a district court should not "intrude upon state policy any more than necessary." *Whitcomb v. Chavis*, 403 U.S. 124, 160, 91 S.Ct. 1858, 1878, 29 L.Ed.2d 363 (1971).

3. Proposals of the Parties

a. Proposals of the City, Park District, and Class Plaintiffs

The City, Park District, and class plaintiffs propose that this court adopt the forms of government for the City and the Park District that are included in the consent decree. The City, Park District, and class plaintiffs agree that the government should be based on a six-district structure, with a modified strong mayor government for the City and a seven-member Park District Board, with the Board president elected at-large. The parties disagree, however, on where the lines dividing the six districts should be drawn.

The Park District and the class plaintiffs argue that the district lines should be drawn as indicated in the consent decree. Curiously, neither the Park District nor the class plaintiffs have provided the court with a block map outlining the districts, statistics indicating the racial composition of each district, or arguments why the lines as drawn are constitutionally permissible. Obviously, this oversight makes it difficult for the court to weigh the ability of the proposed districts to remedy the voting rights violation. The court is aware, however, that the district lines as drawn have resulted in the election of

three white, two African-American, and one Latino aldermen. (Perkins/McCoy Mem. at 8.) Therefore, the racial percentage breakdown of aldermen is 50 percent white, 33.3 percent African-American, and 16.7 percent Latino. The mayor, who is elected at-large, is also white. At the present time there are two African-Americans, one Latino, and four whites (including the president) on the Park District Board. (Park Dist. Mem. at 6.) Respectively, the Board is 57.1 percent white, 28.6 percent African-American, and 14.3 percent Latino.[6]

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[6] According to official census data, the total population of the City of Chicago Heights is 33,072, with 54.8 percent white, 34.8 percent African-American, and 15 percent Latino. (Perkins/McCoy Exhibit 2 at 6.) The City claims that the total population of Chicago Heights is 33,072, with a racial breakdown of 54.8 percent white, 34.8 percent African-American, and 9.7 percent Latino. However, as the City does not cite a source for its data, the court may not verify this statistic. The total voting age population of Chicago Heights is 22,961, with a racial breakdown of 57.36 percent white, 29.77 percent African-American, and 12.87 percent Latino. *See Ketchum v. Byrne*, 740 F.2d 1398, 1412-13 (7th Cir.1984) ("Because minority groups generally have a younger population and, consequently, a larger proportion of individuals who are ineligible to vote . . . [w]hen voting age population data are available and the district court accepts them as reliable, it seems reasonable for such data to be used in evaluating minority voting strength . . . "). Although the Seventh Circuit has recently held that citizen voting age population is the proper benchmark for measuring proportionality of districts, the parties do not provide the court with any statistics regarding the citizen voting age population. *See Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir.1998), *petition for cert. filed*, May 12, 1998. The 2000 census will undoubtably alter the current statistics regarding the racial makeup of the City.

The City is also in favor of a six-district plan, but argues that the lines should be drawn in a different manner. Again complicating this court's ability to compare the plans, the City does not cite a source for its statistical analysis of Chicago Heights, which varies significantly from that proposed by Perkins and McCoy using official census reports. The City's plan would create two majority African-American districts and four majority white districts. (City's Proposed Six District Map; McCoy Aff. at 2.) The City's proposed districts differ from the current scheme supported by the class plaintiffs and the Park District primarily in terms of its effect on Hungry Hill. The City's plan would decrease the minority population in Hungry Hill, primarily through a substantial reduction in the Latino population. According to the City's statistics, the voting age population in Hungry Hill would be 28 percent Latino, 14 percent African-American, and 59 percent white. (City's Proposed Six District Map.) The City's statistics do not account for the non-citizen population among Latinos, which would no doubt result in further dilution of the Latino vote.[7] The class plaintiffs object to the redrawing of the district lines proposed by the City and argue that the City's proposal will dilute the minority representation in the city council by making it

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[7] *See supra* note 6.

unlikely that a Latino could be elected to the council.[8] (Class Pls.' Response at 2.)

b. Proposal of Perkins and McCoy

The present governmental structure as well as the present district lines are objected to by Perkins and McCoy. The individual plaintiffs propose that the city adopt an Article 3.1 aldermanic form of government with seven single-member districts and a mayor, city clerk, and city treasurer elected at-large. Under the aldermanic form of government, the mayor presides over meetings but only votes in the case of tie votes or where a super-majority is required. *See* 65 ILCS 5/3.1-40-50. The mayor also has veto power, which can be overridden by the council. *See* 65 ILCS 5/3.1-40-45, 50. According to the Perkins/McCoy plan, each elected official would serve a four-year term. For the Park District, Perkins and McCoy propose the creation of a seven-member board, which would elect a Board president from within its ranks.

The districting lines proposed by Perkins and McCoy create seven districts: two majority African-American, three majority white, one majority Latino, and one district in which no single group is in the majority. (Perkins/McCoy Mem. at 13.) In terms of voting age population,

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[8] Although the instant case is brought by African-American plaintiffs, this court must remain mindful of the effect of any proposed remedy on the Latino voting population. *See U.S. v. Paradise*, 480 U.S. 149, 171, 107 S.Ct. 1053, 1066, 94 L.Ed.2d 203 (1987) (finding that one of the factors that a court must consider in determining whether a remedy is narrowly tailored is the "impact of the relief on the rights of third parties.").

the McCoy/Perkins districts provide for two majority African-American districts, four majority white districts, and one Latino "influence" district.[9] (Perkins/McCoy Ex. C.)

Perkins and McCoy allege that, the current system negates the power of the African-American and Latino representatives because, under the six-member structure, tie votes have frequently resulted, with the mayor breaking the tie by voting with the white aldermen. Furthermore, under the modified strong mayor government the mayor may exercise veto power, thereby further diluting the power of the minority voters. In addition, the mayor appoints the clerk and treasurer and has the power to hire and fire in certain departments. According to the individual plaintiffs, "the mayor now acts as a seventh alderman – indeed, a super-alderman, who has the power to appoint two important City positions and who is *not* elected from a single-member district, but rather, is elected at-large." (McCoy/Perkins Mem. at 9.) The individual plaintiffs argue that the current system ensures that non-white aldermen cannot approve legislation without white support. However, white aldermen can approve everything without non-white support. McCoy and Perkins present similar concerns regarding the Park District's governmental structure and its effect on the African-Americans' ability to elect a Board president or effect real change in the Park District.

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[9] In the Perkins/McCoy plan, Hungry Hill has a voting age population that is 44.1 percent Latino, 10.8 percent African American, and 45 percent white.

4. Analysis of Proposals of the Parties

a. Form of Government

As this court noted in its earlier opinion, the City's switch to "strong mayor, weak council form of government in which the mayor appoints the heads of two important city departments is an odd way to remedy a voting rights violation." *Harper*, 1997 WL 102543 at *13. In addition, this court indicated that there was nothing in the record in support of the argument that a strong mayor form of City government or a Park District government with a Board president elected at-large "remedied rather than preserved the effects of the prior system." *Id.* Furthermore, the record indicated that "the current form of government creates a stalemate between minority and non-minority representatives on the city council, while shifting power to the mayor, who is elected at-large." *Id.*

Despite this court's earlier warnings, the parties arguing in favor of the governments provided in the consent decree do not present the court with support for their argument that the consent decree remedies the Section 2 violation. In particular, the parties do not explain how a government structure where the tie-breaking vote is elected at-large remedies a voting rights violation predicated on the fact that the at-large election system enhanced discrimination against African-Americans. By adopting a curious variant of the strong mayor government, the mayor in Chicago Heights is provided powers that exceed those present in other statutory forms of Illinois government. He is able to vote on legislation in the case of a tie, or where a vote greater than a majority is required. *See* 65 ILCS 5/6-4-5. In these tie situations

which have resulted, the mayor has voted with the white aldermen. (McCoy Aff. at 3.) In addition, the mayor may veto ordinances passed by the council, which may only be overridden by a three-fifths majority of the council. *See* 65 ILCS 5/6-4-2, 3. The mayor's power is further increased by allowing him to appoint both the city clerk and the city treasurer. *See McCoy Aff.* at 2. Other significant mayoral powers that are peculiar to the strong mayor government include the ability "[t]o appoint and remove his administrative assistants, budget and finance director, heads of all departments, and to appoint and remove all other officers of the municipality, commissions, boards and agencies . . . "; "[t]o exercise control of all departments and divisions . . . "; "[t]o attend all meetings of the council with the right to take part in the discussions . . . "; and, "[t]o recommend to the council for adoption such measures as he may deem necessary or expedient." 65 ILCS 5/6-4-7.

The Park District government in the consent decree is also a strange remedy for a voting rights violation. Despite the fact that the Illinois Park District Code provides that the Board president need not be elected at-large, the remedy in the consent decree for vote dilution caused by the at-large voting system was to allow the Board president to be elected at-large. This result is particularly problematic in a seven-member board structure, where the president has the power to cast tie-breaking votes.

The district court need not defer to a state-proposed remedial plan if the plan does not completely remedy the violation or if the plan itself violates Section 2 of the Act. *See Williams v. City of Texarkana, Ark.*, 32 F.3d 1265, 1268

(8th Cir.1994). This court finds that the modified strong mayor government is not a complete remedy to the Section 2 violation, nor is the remedial plan proposed by the Park District. Notably, by granting significant power to the mayor and Board president who are both elected at-large, the proposed systems perpetuate the race-based violation of the Voting Rights Act that occurred in the previous at-large voting system. *See, e.g., Dillard v. Crenshaw County, Alabama,* 831 F.2d 246 (11th Cir.1987) (finding that a proposal for restructuring election scheme for county commission which allowed for an at-large election of the chairperson violated the Voting Rights Act); *Harvell v. Blytheville School Dist.,* 126 F.3d 1038, 1040 (8th Cir.1997) (finding that a 5-2 system proposed by the school district in which five members would be elected from districts and two members would be elected at-large is not an adequate remedy to remedy a voting violation caused by an at-large system: "[t]he inability of black voters to affect the at-large elections under the 5-2 plan is no different from what it was under the previous electoral scheme"); *Buchanan v. City of Jackson,* 683 F.Supp. 1537, 1545 (W.D.Tenn.1988) (Todd, J.) (rejecting a proposed remedy in which six commissioners would be elected from districts and three would be elected at-large because "the potential would remain for the election of an administration that is unresponsive to the needs of the black community"). *See generally Thornburg v. Gingles,* 478 U.S. 30, 49, 106 S.Ct. 2752, 2766, 92 L.Ed.2d 25 (1986) (finding that at-large systems "where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters").

The City, Park District, and class plaintiffs do not propose any alternate remedy for the voting rights violations. Therefore, this court turns to the remedy proposed by the individual plaintiffs Perkins and McCoy. In terms of the City government, this court is in agreement with the individual plaintiffs that a traditional aldermanic form of government would reduce the power of the mayor, who is necessarily elected at-large. One significant difference between these forms of government is that in the aldermanic form a mayor's veto may be overridden by a two-thirds vote of the aldermen, whereas in the strong mayor format a three-fifths majority is required. Compare 65 ILCS 5/3.1-40-50 *with* 65 ILCS 5/6-4-3. While it is true that both the aldermanic government and the strong mayor government allow the mayor to cast tie-breaking votes, compare 65 ILCS 5/6-4-5 *with* 65 ILCS 5/3.1-40-30, the Perkins/McCoy proposal provides for seven aldermen, thus ensuring that tie votes will not result.[10] Even the City agrees that the creation of six districts, as provided in the City's plan, "may provide more opportunity for even splits by the aldermen . . . " (City Mem. at 7.) Another significant difference is that the modified strong mayor government proposed by the City and the class plaintiffs allows the mayor to appoint the city clerk and city treasurer; however, in the aldermanic form of government these officers would be elected at-large. *See* 65 ILCS 5/3.1-20-5.

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[10] Seven single-member districts is a permissible variant of the aldermanic form of government under the Illinois Municipal Code. *See* 65 ILCS 5/3.1-20-20.

For similar reasons, this court looks favorably upon the structure of the Perkins and McCoy proposal for the Park District. Rather than perpetuating the dilution of the minority voting strength by electing the Board president at-large, Perkins and McCoy suggest that the president be selected by the seven elected council members. This system would increase the voice of minority voters by not allowing the at-large member to cast tie-breaking votes. Furthermore, the election of the Board president from within the elected Board members is clearly allowed under Illinois law. *See* 70 ILCS 1205/4-8.

In conclusion, this court finds that the remedies proposed by the City, Park District, and class plaintiffs do not adequately address the Section 2 violation. "This court cannot authorize an element of an election proposal that will not with certitude completely remedy the Section 2 violation." *Crenshaw County*, 831 F.2d at 252. In contrast, the Perkins/McCoy remedy for governmental structure offers a more complete remedy, yet is not without its own problems. In particular, this court is troubled by the potential of the seven-district structure to be challenged on Equal Protection grounds.

b. Drawing District Lines

Although the Perkins/McCoy proposal is a satisfactory remedy with regards to the governmental structures for the City and the Park District, this court is hesitant to divide Chicago Heights into seven districts. The Supreme Court has held that race must not be a predominant factor in drawing district lines. Voter classifications based upon race are considered suspect and therefore subject to

strict scrutiny if they subordinate traditional districting criteria to race. *See, e.g., Bush v. Vera*, 517 U.S. 952, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996); *Shaw v. Hunt*, 517 U.S. 899, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996); *Miller v. Johnson*, 515 U.S. 900, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995); *Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993).

Thus, fashioning a remedy that will draw district lines so as to remedy a voting rights violation, but without making race a predominant factor, is a complicated undertaking. The opponents of the Perkins/McCoy plan have justifiably argued that the creation of seven wards with the predominant intent of racial gerrymandering runs the risk of being challenged on an Equal Protection basis. Creating majority-minority districts as a remedy to voting rights violations inevitably relies on "a quintessentially race-conscious calculus aptly described as the 'politics of second best.' " *Johnson v. De Grandy*, 512 U.S. 997, 1020, 114 S.Ct. 2647, 2661, 129 L.Ed.2d 775 (1994) (Souter, concurring) (citing B. Grofman, L. Handley & R. Neimi, *Minority Representation and the Quest for Voting Equality*, 136 (1992)). Thus emerges the paradox of fashioning a voting rights remedy based on districts in voting remedy cases. As one district court has aptly noted, any remedial plan "(even one fashioned solely with race-neutral principles) must be ultimately tested by whether it cures the § 2 violation, . . . race will always be a factor, for the ultimate question is whether the proposed plan provides the complaining racial group (in this case, African-Americans) equal access to the political process within the context of § 2." *Dillard v. City of Greensboro*, 946 F.Supp. 946, 955

(M.D.Ala.1996) (Thompson, C.J.). Finally, any redistricting plan that this court may approve would be subject to continued constitutional challenges and would require being redrawn after the 2000 census.

5. Cumulative Voting

a. Cumulative Voting Defined

Thus, while this court favors a seven-member structure for the Park District and City, seven, single-membered districts would not an effective remedy for the Section 2 violation in Chicago Heights. However, a drawing of district lines is not required in order to remedy the voting rights violation in Chicago Heights. Rather than dividing the city into seven districts, this court finds that a system of at-large voting that utilizes cumulative voting, in combination with the Perkins/McCoy plan, would successfully remedy the voting rights violation.

Cumulative voting as a remedy functions in the following manner:

> Voters receive as many votes to cast as there are seats to fill; voters then may distribute these multiple votes among minority candidates in any way they prefer. Thus, voters may "plump" all their votes on one candidate – the strategy of choice for minority groups with intense preferences for a particular candidate – or give one vote each to several candidates. If five seats on a city council are to be filled, voters would have five votes each to distribute as they saw fit.

Richard Pildes & Kristen Donoghue, *Cumulative Voting in the United States*, 1995 U. Chi. Legal F. 241, 254

(1995). *See generally* Richard L. Engstrom, *Modified Multi-Seat Election Systems as Remedies for Minority Vote Dilution,* 21 Stetson L.Rev. 743 (1992); Edward Still, *Alternatives to Single Member Districts, in* Chandler Davidson, ed., *Minority Vote Dilution* 249 (1989). Cumulative voting is frequently used to elect directors of corporations as a strategy for ensuring representation of minority shareholders in the board. *See* Harry Henn & John Alexander, *Laws of Corporations,* (3d Ed.1983) at 495-97. In fact, most states permit cumulative voting for corporations, allowing the individual corporation to elect whether to utilize the voting scheme. *See* Robert Clark, *Corporate Law* § 9.1 at 362 (1986).

If a cumulative voting system were applied to the Perkins/McCoy plan, the seven aldermen and seven Board members would be elected at-large using cumulative voting, rather than electing one alderman and Board member from each district as proposed by Perkins and McCoy.[11] Each voter would be allocated seven votes to use as he or she chooses. Thus, the voter could use all seven votes to elect one candidate, or distribute the votes among several candidates. The seven candidates with the highest number of votes would be elected to office.

There are several distinct advantages to a system of regionwide cumulative voting for local office. In particular, rather than using race as a proxy for voting preference, such a system allows voters to "draw their own

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[11] As previously noted, the voting system in place when the voting rights violation occurred did not permit cumulative voting. *Harper,* 824 F.Supp. at 793 n. 4. (Ex. A, Report and Recommendation, Nordberg, J.).

jurisdictional boundaries, decide which local governments were most important to them, and allocate their votes accordingly." Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L.Rev. 1115, 1156 (1996) (footnote and citation omitted). All minority groups may potentially benefit from such a system – not just racial minorities. For example, in a region where Republicans are in a minority, cumulative voting could allow them to elect a candidate of choice. As one commentator has suggested:

> In a multi-seat election, voters can aggregate their votes to reflect the intensity of their preferences. Because voters, depending on their interests, can form coalitions that cut across racial lines, this form of political arrangement diminishes the likelihood of reifying [sic] race as a fixed, political category. Members of different racial groups who enter into such alliances are more likely "to find confidence-building measures that build trust and overcome antagonism."

Lani Guinier, *(E)Racing Democracy*, 108 Harv. L.Rev. 109, 133 (footnote omitted). Relevant to the instant case is the fact that cumulative voting would allow minority voters in Chicago Heights, including the African-Americans and Latinos, to elect candidates of choice without creating race-conscious district lines that would be subject to constitutional challenge. Indeed, cumulative voting does not compartmentalize voters according to their race: "the state does not directly single out any particular minorities for special protection through concentration into 'safe' districts." Pildes & Donoghue, *supra*, at 255.

b. Federal Court Precedent

The Supreme Court has held that single-member districts are, in general, favorable to at-large voting plans and muti-member districts. *See, e.g., Growe v. Emison*, 507 U.S. 25, 40, 113 S.Ct. 1075, 1084, 122 L.Ed.2d 388 (1993) (citations omitted). However, the Supreme Court has also consistently held that at-large procedures are not unconstitutional per se. *See, e.g., Rogers v. Lodge*, 458 U.S. 613, 617, 102 S.Ct. 3272, 3275, 73 L.Ed.2d 1012 (1982); *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 499, 13 L.Ed.2d 401 (1965). A few Justices have argued that district-based elections represent a political choice and are not necessarily the only suitable remedy for a voting rights violation. *See, e.g., Davis v. Bandemer*, 478 U.S. 109, 160, 106 S.Ct. 2797, 2824, 92 L.Ed.2d 85 (1986) (O'Connor, J., concurring). Thus, although single-member districts may be preferred, they are not by any means an exclusive remedy to voting rights violations. *See, e.g., Dillard v. Town of Cuba*, 708 F.Supp. 1244 (M.D.Ala.1988) (Thompson, J.) (approving a limited voting scheme as a § 2 remedy); *Dillard v. Chilton County Board of Education*, 699 F.Supp. 870 (M.D.Ala.1988) (Thompson, J.) (approving a cumulative voting scheme as a § 2 remedy), aff'd, 868 F.2d 1274 (11th Cir.1989); *Cane v. Worcester County, Maryland*, 847 F.Supp. 369, 373 (D.Md.1994) (Young, J.) (ordering a cumulative voting system as a remedy to a § 2 violation).[12]

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[12] The court ordered the following cumulative voting plan as a remedy for a Voting Rights Act violation: "Each voter may cast up to five votes in a Commission election, and may cumulate his or her votes for one or more chosen candidates.

Indeed, in a recent Voting Rights Act case, Justices Thomas and Scalia suggested that cumulative voting is a "more efficient and straightforward mechanism[ ] for achieving what has already become our tacit objective: roughly proportional allocation of power according to race." *Holder v. Hall*, 512 U.S. 874, 912, 114 S.Ct. 2581, 2601, 129 L.Ed.2d 687 (1994) (Thomas, J. concurring, joined by Scalia, J.). Although it is by far the most common remedy for a Voting Rights Act violation, geographic districting is not a requirement of our political system:

> The decision to rely on single-member geographic districts as a mechanism for conducting elections is merely a political choice – and one that we might reconsider in the future. Indeed, it is a choice that has undoubtedly been influenced by the adversary process: In the cases that have come before us, plaintiffs have focused

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Winning candidates are the top five who receive the most votes of all Commission candidates seeking office." *Id.* at 371 n. 4. On appeal, the district court's remedy was vacated based on the Fourth Circuit's conclusion that the district court, by immediately ordering the implementation of a cumulative voting scheme, "had deprived the County of an adequate opportunity to submit a remedial plan." *Cane v. Worcester County*, 35 F.3d 921, 928 (4th Cir.1994), *cert. denied*, 513 U.S. 1148, 115 S.Ct. 1097, 130 L.Ed.2d 1065 (1995). However, the Fourth Circuit limited its decision to the facts of the case, thus leaving open whether a cumulative voting plan may be a proper remedy in some circumstances. *Id.* at 928 ("We are not called upon to outline whether facts and circumstances might justify the imposition of a cumulative voting plan on a political subdivision. Our review is limited by the specific facts and circumstances presented here, and under them, the district court abused its discretion in adopting the cumulative voting scheme proposed by Plaintiffs.").

> largely upon attacking multimember districts and have offered single-member schemes as the benchmark of an "undiluted" alternative. But as the destructive effects of our current penchant for majority-minority districts become more apparent, courts will undoubtedly be called upon to reconsider adherence to geographic districting as a method for ensuring minority voting power. Already, some advocates have criticized the current strategy of creating majority-minority districts and have urged the adoption of other voting mechanisms – for example, cumulative voting or a system using transferable votes – that can produce proportional results without requiring division of the electorate into racially segregated districts.
>
> . . . Such changes may seem radical departures from the electoral systems with which we are most familiar. Indeed, they may be unwanted by the people in the several States who purposely have adopted districting systems in their electoral laws. But nothing in our present understanding of the Voting Rights Act places a principled limit on the authority of federal courts that would prevent them from instituting a system of cumulative voting as a remedy under § 2, or even from establishing a more elaborate mechanism for securing proportional representation based on transferable votes. As some Members of the Court have already recognized, geographic districting is not a requirement inherent in our political system.

Id. at 909-11, 114 S.Ct. at 2600-01 (1994) (footnotes and citations omitted).

c. One-Person, One-Vote

This court finds that a system of cumulative voting complies with the requirements that the court be mindful of the "one-person, one-vote" requirement of the Equal Protection Clause. According to this principle, courts must equalize the populations in each district as nearly as is practicable. *Reynolds v. Sims*, 377 U.S. 533, 577, 84 S.Ct. 1362, 1390, 12 L.Ed.2d 506 (1964). By allowing each voter the same number of votes, cumulative voting subscribes to the one-person, one-vote requirement with numeric exactness. *See, e.g., Guinier, supra*, at 135-36 (finding that cumulative voting is consistent with the one-person, one-vote concept). In contrast, all of the proposals submitted by the parties would result in unequally weighted votes given the variance in the size of the districts and the impossibility of estimating voter turnout and exact populations of districts.

d. Illinois Voting Principles

Cumulative voting also conforms with Illinois' traditional voting principles. The fact that cumulative voting as a remedy has strong roots in Illinois is important given that the Supreme Court has held that district courts should not "intrude upon state policy any more than necessary" in fashioning remedies for voting rights violations. *Whitcomb v. Chavis*, 403 U.S. 124, 160, 91 S.Ct. 1858, 1878, 29 L.Ed.2d 363 (1971).

Illinois was the first state to introduce a cumulative voting system. *See Henn & Alexander, supra*, at 495 n. 12. Cumulative voting for directors of corporations was

introduced in Illinois in 1870. *See id.* In addition, cumulative voting was adopted by the Illinois Constitutional Convention of 1869-70 as a device to assure minority representation in the legislature. *See* Charles Hynerman & Julian Morgan, Cumulative Voting in Illinois, 32 Ill. L.Rev. 12, 13 (1937). The main reason for the adoption of the cumulative voting system "was a desire to correct the situation wherein southern Republicans and northern Democrats were going unrepresented in the legislature." *Id.* (footnote omitted). Under this system, three representatives were elected for two-year terms from 51 different districts. Voters could cast one vote for three candidates, one and one-half votes for two candidates, or one vote for one candidate and two votes for a second candidate. *See id. See also* Ill. Const. of 1870, art. IV, §§ 6, 7, 8. The cumulative voting system in Illinois corporations is still prescribed in some situations, *see* Henn & Alexander, *supra*, at 495 n. 13; however, cumulative voting for the legislature was repealed in 1980, *see Rybicki v. State Board of Elections*, 574 F.Supp. 1082, 1088 n. 17 (N.D.Ill.1982).

Cumulative voting nonetheless remains firmly established as a statutory form of city government in Illinois. As previously noted, the Illinois Municipal Code provides for a form of cumulative voting in a variant of the aldermanic form of government. Under the minority representation plan:

> [E]ach elector may cast as many votes as there are aldermen to be elected in the elector's district, or may distribute his or her votes, or equal parts of the votes, among the candidates as the elector sees see fit. The candidate highest in votes is elected if only one alderman is to be

> elected; the candidates highest and next highest in votes are elected if only 2 aldermen are elected; the 3 highest candidates in votes are elected when 3 aldermen are to be elected. 65 ILCS 5/3.1-15-35.

III. Conclusion

In conclusion, this court orders that the City of Chicago Heights and the Chicago Heights Park District implement the governmental forms discussed in this Memorandum Opinion and Order. In accordance with the Perkins/McCoy plan, the City must adopt an aldermanic form of government, as provided in Article 3.1 of the Illinois Municipal Code. The City will have a total of seven aldermen, who will be elected at-large by cumulative voting for four-year terms. The voting procedure will be as outlined in this opinion – a modified form of the "minority representation plan" provided for by Illinois law in the aldermanic form of government. Each voter will be allocated seven votes to use as he or she chooses, and the seven candidates with the most votes will be elected to office. The mayor, city treasurer, and city clerk will be elected at-large.

The Park District is ordered to adopt a seven-member Board which will elect the Board president from among its ranks, as provided in the Illinois Park District Code. The seven members of the Board will be elected at-large by cumulative voting for four-year terms. Accordingly, voters will be given seven votes to cast for the Park

District Board and the seven candidates with the highest number of votes will be elected to office.

It is so ordered.

United States Court of Appeals,
Seventh Circuit.

Kevin PERKINS and Robert McCoy, Plaintiffs-Appellants,

and

Ron Harper and William Elliot, Plaintiffs-Appellees,

v.

CITY OF CHICAGO HEIGHTS, Chicago Heights Election Commission, Chicago Heights Park District, et al., Defendants-Appellees.

No. 94-2491.

Argued Dec. 9, 1994.

Decided Feb. 7, 1995.*

Rehearing and Suggestion for Rehearing En Banc Denied March 31, 1995.

Michael P. Seng, Chicago, IL, James E. Craven, Donald M. Craven (argued), Springfield, IL, for Ron Harper, William Elliot.

Robert L. Anderson (argued), Krohn, Jenkins & Anderson, Chicago, IL, for Kevin Perkins, Robert McCoy.

James J. Casey, Kai A. Nebel, Kathleen M. O'Laughlin, Keck, Mahin & Cate, Anthony G. Scariano, Raymond A. Hauser (argued), Jon Gardner Crawford, Kelly A. Hayden, Scariano, Kula, Ellch & Himes, Chicago, IL, for City of Chicago Heights, Chicago Heights Election Com'n, Stanley Kusper.

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* This opinion was originally released in typescript.

James J. Casey, Kai A. Nebel, Kathleen M. O'Laughlin, Edward M. Kay, James T. Ferrini, Susan Condon, Imelda Terrazino, Clausen, Miller, Gorman, Caffrey & Witous, Anthony G. Scariano, Chicago, IL, for Chicago Heights Park Dist.

Before FLAUM, EASTERBROOK, and ROVNER, Circuit Judges.

FLAUM, Circuit Judge.

Two named plaintiffs in a class action appeal a consent decree entered in a Voting Rights case as violative of the Voting Rights Act and the Fourteenth and Fifteenth Amendments. Because the parties to the consent decree lacked the authority to assent to it, and the requisite findings of federal law violations necessary for the district court to approve the decree were not established, we now vacate that decree.

I.

Kevin Perkins and Robert McCoy, plaintiffs-appellants in the instant case, and Ron Harper and William Elliot (all together the "Class"), filed a Complaint for Injunctive and Other Equitable Relief against the City of Chicago Heights and the Chicago Heights Election Commission on June 8, 1987. The complaint alleged that Chicago Heights' non-partisan, at-large district wide elections used to elect representatives to the Chicago Heights City Council violated section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.*, by diluting the opportunity of African-Americans to elect representatives of their choice. On November 17, 1988, the Class filed a

complaint alleging similar violations against the Chicago Heights Park District and Stanley Kusper, Clerk of Cook County, Illinois.

On January 29, 1988, the Class filed a Motion to Maintain a Class Action and for Certification of the Class supported by affidavits of Harper, Elliot, McCoy and Perkins. This motion was formally granted on April 18, 1994, with the class defined as:

> All African-American citizens of the United States residing in the geographic confines of 1) The City of Chicago Heights, or 2) The Chicago Heights Park District.

Regarding the six-year delay in granting class certification, Judge Will, to whom the case had been transferred from Judge Nordberg, stated:

> I talked to Judge Nordberg, and Judge Nordberg was of the opinion that he had certified the class way back when, when the motion for class certification was originally filed. . . . Well, he said I certainly intended to. And if I didn't it was an omission, and I am perfectly agreeable to your certifying the class now since that's what I intended to do.
>
> Since it made sense to me to certify the class, because this was a class action from day one, and all that happened was that Judge Nordberg hadn't entered the order which he thought he had entered, and therefore I certified the class sometime ago at this point.

In February, 1989, all parties moved for summary judgment. On January 28, 1992, Magistrate Judge W.

Thomas Rosemond, Jr. issued a Report and Recommendation suggesting that the district court should grant summary judgment for the Class on the following issues: 1) whether the African-American community in Chicago Heights was sufficiently compact and contiguous to form a voting age population majority in two of seven districts; and 2) whether voting in Chicago Heights was racially polarized.

Judge Nordberg adopted the Magistrate Judge's findings on May 14, 1993. In addition, Judge Nordberg entered summary judgment for the Class on the issue of whether the white majority in Chicago Heights voted sufficiently as a block to defeat usually the African-American community's preferred candidates. The court did not enter a finding of liability against the defendants, however, finding instead that genuine issues of material fact still existed as to the following questions: 1) whether the at-large system in Chicago Heights enhanced discrimination against African-Americans; 2) whether African-Americans were denied access to the slating process; 3) whether African-Americans were the victims of official discrimination in the form of political gerrymandering; and 4) whether African-Americans bore the effects of historic socioeconomic discrimination in the areas of housing, employment, education, and public accommodations that hindered their ability to participate effectively in the Chicago Heights political process.

The parties filed an Agreed Motion to Consolidate the two cases against Chicago Heights and against the Park District. The court granted that motion on September 13, 1993. The case was reassigned to Judge Will, who held pretrial mediation conferences with the parties, all

of whom submitted proposed voting maps. As a result of these negotiations the parties agreed to a consent decree that included a new voting map consisting of six single member districts and revised forms of government for the City and the Park District. On January 6, 1994, Perkins and McCoy filed a motion objecting to their being disregarded as named plaintiffs during settlement negotiations. Judge Will denied this motion as lacking justification the same day.

The parties held a public hearing on April 25, 1994, at the Chicago Heights Municipal Building. The proceeding was taped, transcribed, and presented at a fairness hearing conducted by Judge Will on May 18, 1994. Judge Will approved the parties' consent agreement and entered findings of fact, conclusions of law and a judgment order on May 24, 1994. The consent decree changes the City's form of government from a "Managerial Form of Municipal Government," 65 ILCS 5/5-1-1 *et seq.*, to a "Strong Mayor Form of Municipal Government," 65 ILCS 5/6-1-1 *et seq.* Pursuant to the consent decree, Chicago Heights will have a mayor elected at-large. 65 ILCS 5/6-3-3. However, the consent decree modifies the statutory Strong Mayor Form of Government in several ways. First, instead of having 5 wards with 2 aldermen elected from each ward, 65 ILCS 5/6-3-3 and 6-3-5, Chicago Heights will have 6 districts with one alderman elected from each. Furthermore, instead of electing the City Clerk and Treasurer, 65 ILCS 5/6-3-3, the mayor will appoint people to fill those positions and the City Council will confirm them. Finally, although only statutorily authorized for municipalities with populations above 50,000, 65 ILCS

5/6-4-12 and 5/6-4-13, Chicago Heights, a city of approximately 33,000, will have administrative assistants to the mayor, as well as a Budget and Finance Director, all to be appointed by the mayor and to work at his pleasure.

The consent decree also modifies the statutorily defined form of government for Illinois Park Districts. *See* 70 ILCS 1205/1-1 *et seq.* Among other things, the decree calls for six Commissioners, one from each district, to be elected to four-year terms, rather than five Commissioners to be elected at-large to six-year terms. The decree also provides for a Commission President to be elected at-large. Finally, the consent decree states that the Chicago Heights Park District Board "shall" pass a resolution, as allowed by 70 ILCS 1205/2-10a and 2-12a, mandating that the Board will consist of seven Commissioners elected to four-year terms.

Perkins and McCoy moved for a new trial, which the district court denied. This appeal followed.

II.

Perkins and McCoy argue that the consent decree violates the Voting Rights Act and the Fourteenth and Fifteenth Amendments. Specifically, Perkins and McCoy contend that the six districts have a population variance of more than 10% and fail to respect traditional natural and political boundaries. *See Karcher v. Daggett*, 462 U.S. 725, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983); *Mahan v. Howell*, 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973), modified, 411 U.S. 922, 93 S.Ct. 1475, 36 L.Ed.2d 316 (1973); *Kirkpatrick v. Preisler*, 394 U.S. 526, 89 S.Ct. 1225, 22

L.Ed.2d 519 (1969). In addition, Perkins and McCoy maintain that the modification of the statutory Strong Mayor Form of Government dilutes their voting power by ordering six instead of five districts and by mandating the appointment rather than election of the City Clerk and Treasurer. Alternatively, they argue that the changes to the statutory form are illegal. Finally, Perkins and McCoy assert that the consent decree is invalid because the other named plaintiffs, Elliot and Harper, failed to represent the Class adequately and because there is insufficient evidence to prove that the Class was certified before 1994. Because we believe that the parties did not have the ability to consent to the modifications contained in the consent decree, we vacate the decree and remand.[1]

While parties can settle their litigation with consent decrees, they cannot agree to "disregard valid state laws," *People Who Care v. Rockford Bd. of Educ.*, 961 F.2d 1335, 1337 (7th Cir.1992); *Kasper v. Bd. of Election Com'rs of City of Chicago*, 814 F.2d 332, 341 (7th Cir.1987), and cannot consent to do something together that they lack the power to do individually. *Kasper*, 814 F.2d at 341-42. We have previously recognized that "[s]ome rules of law

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[1] Although done regrettably late, we find no prejudicial error in the district court's delay in certifying the Class. All parties treated the case as a class action from the beginning and the Judges involved believed that a formal order to that effect had been entered. The court eventually certified the Class, before the court approved the consent decree. Nothing in the record persuades us either that the Class was not properly certified or that Elliot and Harper did not adequately represent the Class. We therefore find Perkins and McCoy's arguments to the contrary without merit.

are designed to limit the authority of public officeholders, to make them return to other branches of government or to the voters for permission to engage in certain acts. They may chafe at these restraints and seek to evade them," *Dunn v. Carey*, 808 F.2d 555, 560 (7th Cir.1986), but they may not do so by agreeing to do something state law forbids. Because a consent decree is not just an agreement between two parties, but is also a judicial act, district courts must ensure that the consent decrees they approve respect this principle as well as the rights of third parties. *EEOC v. Hiram Walker & Sons*, 768 F.2d 884, 889 (7th Cir.1985), *cert. denied*, 478 U.S. 1004, 106 S.Ct. 3293, 92 L.Ed.2d 709 (1986); *South v. Rowe*, 759 F.2d 610, 613 n. 3 (7th Cir.1985).

Once a court has found a federal constitutional or statutory violation, however, a state law cannot prevent a necessary remedy. Under the Supremacy Clause, the federal remedy prevails, "To hold otherwise would fail to take account of the obligations of local governments, under the Supremacy Clause, to fulfill the requirements that the Constitution imposes on them." *Missouri v. Jenkins*, 495 U.S. 33, 57-58, 110 S.Ct. 1651, 1666, 109 L.Ed.2d 31 (1990). Thus, upon properly supported findings that such a remedy is *necessary* to rectify a *violation of federal law*, the district court can approve a consent decree which overrides state law provisions. Without such findings, however, parties can only agree to that which they have the power to do outside of litigation. As we have stated before, "[a]n alteration of the statutory scheme may not be based on consent alone; it depends on an exercise of federal power, which in turn depends on a *violation* of federal law." *Kasper*, 814 F.2d at 342 (emphasis

added); *see also Ragsdale v. Turnock*, 941 F.2d 501, 515 (7th Cir.1991) (" '[T]he appropriate relation between state and national power' . . . is one in which federal judges employ their equitable powers to enjoin the enforcement of state statutes *only after* they have determined that these statutes contain some constitutional deficiency.") (Flaum, J., concurring in part and dissenting in part) (emphasis in original) (citation omitted), *cert. denied*, 502 U.S. 1035, 112 S.Ct. 879, 116 L.Ed.2d 784 (1992); *Overton v. City of Austin*, 748 F.2d 941, 957 (5th Cir.1984) ("Absent a properly grounded judicial determination that the present charter provisions are illegal, the consent of the parties provides an insufficient basis on which to judicially ordain a different system of council election and composition.").

The Illinois Constitution states that home rule units, such as Chicago Heights:

> shall have the *power subject to approval by referendum* to adopt, alter or repeal a form of government provided by law, . . . A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office *only as approved by referendum or as otherwise authorized by law*. . . .

Ill. Const. Art. VII, § 6(f) (emphasis added). Therefore, a change to the Strong Mayor Form of Government, and at least certain modifications to that statutory system, must normally be accomplished through a referendum. The district court, in approving the consent decree, stated that "this Consent Decree and Order is supported by a significant basis in evidence and law, and its measures are narrowly tailored to achieve the necessary remedy." The

decree states that it should not be construed as an admission of liability by Chicago Heights. These generalized statements do not constitute sufficient findings of a violation of federal law and cannot adequately form the basis for the modifications of the Illinois statutory forms of government. Therefore, absent particularized findings, the decree could not direct changes normally requiring voter approval and we must vacate the decree and remand for further proceedings.[2]

On remand, the parties may either attempt to reach a new agreement in light of our discussion above or may proceed to trial. If they choose the former option, the parties can, after a finding of a Voting Rights Act violation, adopt, and the district court can approve, one of the alternative forms of government provided by Illinois law. However, the parties cannot modify the chosen form simply at-will. Remedies that override state law must be narrowly tailored so as to infringe state sovereignty as minimally as possible. *Jenkins*, 495 U.S. at 57-58, 110 S.Ct. at 1666-67. Federal remedial powers can "be exercised only on the basis of a violation of the law and [can] extend no farther than required by the nature and extent of the violation." *General Bldg. Contractors v. Pennsylvania*, 458 U.S. 375, 399, 102 S.Ct. 3141, 3154, 73 L.Ed.2d 835 (1982). Any modifications which must be accomplished through a referendum[3] cannot be made by the consent

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[2] Because we vacate the decree we do not reach Perkins and McCoy's other contentions, which may be rendered moot by further proceedings.

[3] *See Dunne v. County of Cook*, 108 Ill.2d 161, 90 Ill.Dec. 866, 868, 483 N.E.2d 13, 15 (1985) (suggesting that the number of

decree unless the court finds that the statutory provisions would violate federal law and that such changes are necessary to ensure compliance with federal law. In that case, appropriate changes need not be postponed until a violation actually occurs.

Park districts, on the other hand, are not home rule units subject to Article VII, § 6. As "special districts" they are "units of local government," Ill. Const. Art. VII, § 1, for which:

> The General Assembly shall provide by law for the transfer of assets, powers, and functions . . . in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of
>
> . . . .

Ill. Const. Art. VII, § 12. The Constitutional Commentary to this section states that it is designed to "provide by law

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districts and number of members from each district would be an alteration necessitating a referendum). In addition, the appointment, rather than election, of the City Clerk and Treasurer would constitute a decision on the manner of selection of officers, if those positions are "officers" within the constitutional meaning of the term. We note that one court has stated that a city can, consistent with the Illinois Constitution, first alter a statutory form by ordinance and then adopt that form through a referendum. *Flowers v. City of Moline*, 251 Ill.App.3d 348, 190 Ill.Dec. 628, 631, 622 N.E.2d 38, 41 (1993). Assuming that all changes can be approved of in a single referendum does not mean that all possible alterations can also be made in a consent decree. Rather, the parties must do only what is necessary to remedy any federal law violation and must submit all other desired changes to the City's voters for approval.

for the implementation of *changes in the organization* and boundaries of units of local government." (emphasis added) Thus, the organization of the Chicago Heights Park District can normally only be altered in the ways and by the methods authorized by the Illinois General Assembly. The Illinois Revised Statutes allow the Park District Board to change the number of Commissioners and terms of office by board resolution or by referendum. 70 ILCS 1205/2-10a and 2-12a. The statutes mention nothing, however, about electing Commissioners from districts rather than at-large. Absent a specific finding that the Park District system violates the Voting Rights Act and that such changes are necessary to remedy that violation, the district court erred in approving this portion of the consent decree.[4]

Perkins and McCoy argue that we must vacate the consent decree because its districts and modifications violate the Voting Rights Act and the United States Constitution, or in the alternative that the six districts it mandates violate the Illinois statutory requirement of five districts. *See* 65 ILCS 5/6-3-6. Perkins and McCoy do not, however, argue that the Illinois Constitution and our precedent such as *Kasper* require our result today. The Class-appellees contend that such absence constitutes a waiver of the argument.[5] We do not agree. Perkins and

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[4] The consent decree provides that any provision found to be unconstitutional can be severed from the remainder of the decree. Our decision, however, necessarily requires vacating the entire decree.

[5] In their Motion for a New Trial, Perkins and McCoy argued that the modifications to the Strong Mayor Form of Government and Park District organization so derogated from the statutory forms as to be illegal. The City's attorney assured

McCoy's alternative argument minimally sufficed to preserve the issue for appeal; their failure to cite the correct cases simply created the risk that we would not find them. *See, e.g., Elder v. Holloway*, ___ U.S. ___, ___, 114 S.Ct. 1019, 1023, 127 L.Ed.2d 344 (1994). In any event, Perkins and McCoy did not appeal the portions of the consent decree relating to the Park District and, while we often hold arguments waived, in this case, where the district court approved a consent decree that modified a form of government without the state-mandated voter approval and without making the requisite findings of violations of federal law necessitating such changes, we will not find waiver. Perkins and McCoy have standing to appeal the decree and we refuse to "prolong the injury caused by [the] consent decree arrived at through an unfair process by failing to invalidate it sooner rather than later," when a different aggrieved party may make the argument. *Ragsdale*, 941 F.2d at 512 (Flaum, J., concurring in part and dissenting in part). As a federal court, we "must preserve the appropriate relation between state and national power," *Id.* at 515 (citing *Kasper*, 814 F.2d at 340), a task we cannot ignore simply because Perkins and McCoy failed to make the correct legal argument.

For the foregoing reasons, we vacate the consent decree and remand for further proceedings.

VACATED.

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the district court that municipalities can make such alterations in order to settle Voting Rights litigation. Our discussion above establishes otherwise and we have found no authority to the contrary. We further note that no party apprised the district court of the Illinois constitutional provisions on which we have relied.

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

August 28, 2000

Before

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

RON HARPER, KEVIN PERKINS, WILLIAM ELLIOT, and ROBERT MC COY,

Plaintiffs-Appellees/ Cross-Appellants,

Nos. 98-2785, 98-2811, 98-2899, 98-3004, 98-3051 98-3075, 99-2007, 99-2008, 00-1503 00-1515

v.

CITY OF CHICAGO HEIGHTS and the CHICAGO HEIGHTS ELECTION COMMISSION,

Defendants-Appellants/ Cross-Appellees,

and

CHICAGO HEIGHTS PARK DISTRICT, *et al.*,

Defendant-Appellant/ Cross-Appellee,

and

DAVID ORR COOK COUNTY CLERK,

Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

No. 87 C 5112
No. 88 C 9800

David H. Coar, *Judge.*

ORDER

On reconsideration of the petition for rehearing and petition for rehearing *en banc* filed by counsel for the defendants-appellants/cross-appellees on August 10, 2000, all members of the original panel have voted to DENY the petition for rehearing. No judge in regular active service requested a vote on the petition for rehearing *en banc*.

Accordingly, the petition for rehearing is hereby DENIED.

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MR. MICHAEL W. DOBBINS, CLERK
UNITED STATES DISTRICT COURT
219 SOUTH DEARBORN, 20TH FLOOR
CHICAGO, ILLINOIS 60604

MAY 12, 1997
RE: McCOY et al v CHICAGO HEIGHTS
PERKINS et al v CHPD
87 C 5112
88 C 9800
LETTER OF DESIGNATION
MEMO RE: McCOY/PERKINS
REMEDIAL SUBMISSION
PLANS

Dear Mr. Dobbins:

Please be advised that I would like the attached McCoy's and Perkins' Remedial Submissions Plan relative to Robert McCoy, Kevin Perkins, et al. vs. The City of Chicago Heights, 87 C 5112, and Kevin Perkins, Robert McCoy et al. vs. The Chicago Heights Park District, 88 C 9800, be designated as part of the Official Record of the Consolidated Cases enclosed. Please advise if there are any additional things that I need to do to have this occur.

Thanking you in advance for your cooperation. Please advise.

/s/ Robert L. Anderson
Robert L. Anderson

The United States District Court
Northern District of Illinois
Eastern Division

State of Illinois
County of Cook

Robert McCoy, Kevin Perkins, Ron Harper and William Elliot Plaintiffs, vs City of Chicago Heights, Chicago Heights Election Commission Defendants,	District No. 87 c 5112 Consolidated U.S. District Court Honorable Davis H. Coar Courtroom 1419 219 S. Dearborn Street Chicago, Illinois 60602
Robert McCoy, Kevin Perkins, Ron Harper and William Elliot Plaintiffs, vs Chicago Heights Park District, and the Cook County Clerk, Defendants,	District No. 88 c 9800

Affidavit of Robert McCoy

I, Robert McCoy, make the following affidavit relative to the above captioned case:

That I am one the original Plaintiffs in the above matter;

That if I were called upon to testify, I would state the following based upon personal knowledge, research and

information I have obtained in conducting by Aldermanic duties and information from reliable sources;

That I presently reside at 1953 East Lawrence, Chicago Heights, Illinois, and have so resided at this address prior to and since the inception of this case;

That am presently the duly elected Alderman of the First Ward (Beacon Hill) in the City of Chicago Heights.

That the past two years I have served as Alderman of the First Ward. The City of Chicago Heights has a combination Commissioner/Strong Mayor form of government with six wards, one Alderman per ward. In addition, to an even number of wards, the statutory strong Mayor form of government in Chicago Heights has been modified to allow the Mayor to appoint both the City Clerk and City Treasurer. **These modifications along with the dictatorial power of the strong Mayor form of government has created a monarchy in Chicago Heights, which has been riddled with years of corruption.**

That four of the five past city officials have gone to jail for various crimes against the citizens of Chicago Heights. Overall, approximately 19 city officials have either plead guilty or were found guilty of public crimes, with one of these individuals still working in the same position, in the current Ciambrone Administration.

That over the past two years as Alderman, **I have witnessed three general problems with our present form of government,** which leads to discrimination and exclusion for African Americans.

1. That the Strong Mayer controls all hiring, firing, appointments, control over the budgeting process and information.

That the percentages of African American employment is low, in relation to its population; only one employee in a managerial position, only one of the 55 positions in the Fire Department, only seven of 80 police officers. Overall both White and Latinos have employment percentages greater than their percentages of the population, at the expense of the 35% African American population of the city.

That an example of the dictatorship in Chicago Heights was seen when Strong-Mayor Ciambrone created a new position of Police Superintendent at $70,0000 a year without approval of the city council (Sept. 9, 1996), in order to prevent the African American Police Chief from having authority over the police department.

That during the process of developing the city budget for the fiscal year of May 1, 1997-April 30, 1998 the strong mayor prevented the city treasurer from drafting an amended city budget as requested by the majority of the city council. That the mayor so-called passed his city budget with only two of the six aldermen present at a special meeting called by the strong mayor, see exhibit 1 and exhibit 2.

2. That the Strong Mayor/Super Alderman appoints and controls the day to day activities of both the City Clerk and the City Treasurer. Both refused to give information to Aldermen without the Mayor's Approval.

That on several occasions I requested information and/or actions by the city clerk and city treasurer. They refused to honor my requests because of the instructions of the strong mayor.

That even the information I received was first sent to the strong-mayor then given to me by the strong-mayor.

That on one occasion the city clerk would only provide me with information if I paid 25 cents per page to copy the information.

That the City Clerk was suspended without pay by the Mayor, because he didn't walk out of a special city council meeting when the Strong-Mayor walked out. That the city treasurer refused to follow the instructions of the majority of the city council.

3. That the combination of the Commission form and the strong Mayor form of government with six Aldermen; three (3) White wards and three (3) Non-White wards gives the Strong-Mayor an At-Large Aldermanic tie-breaking vote, when the council votes along racial lines and a veto vote as Chief Executive. This ensues that the non-White Aldermen can't approve any legislation without White support, but they can approve everything without non-White support. For example, of the approximately 65 times Mayor Ciambrone has voted since this form of government has been enacted, he has never voted with the Black and Latino Aldermen, in the majority against the three White Aldermen. ***Of the eleven times when the three non-White Aldermen voted one way and the three White Aldermen voted the other way the White Mayer has always voted with the White Aldermen to win*** (see exhibit 3 page 3, 4, 5 and 14).

That when a super-majority vote is required by state law of 3/4 of the city council (5 of 7 votes) the Mayor either violated the law and neither the City Clerk, City Corporation Counsel or City Treasurer corrected the Strong-Mayor (See Exhibit 3 page 7, 9, 11, and 12) or the Strong-mayor uses the city home rule power to supersede the state law, rather than work with Black Aldermen (See Exhibit 3 page 9 and 10).

4. That even though the Chicago Heights Park District has admitted to discriminating against the African American community, it has not improved it's services to the African American community in three areas.

A. Services and facilities to serve the African American Neighborhoods;

That on warm days ***I have driven around my ward and have seen dozens of groups of young people playing ball or jumping rope in the streets, because of the lack of recreational facilities in their neighborhood (See Exhibit 4).***

That there is one major park in Ward One, (Sesto Park #24) located on the far west end of the Ward (Western Ave and Andover Ave). The park only has outdoor basketball courts and children's playground equipment. ***The park is relatively large, but no money has been expended for tennis courts, volleyball, baseball, golf, swimming, or exercising stations. The park lacks a park house.*** Therefore, no recreational activities are available in the fall and winter months. In addition, the Park District has not provided parking and until this year the parks didn't even have toilet facilities.

That by contrast, parks in the White districts (Commissioner Park #4) have tennis courts, well maintained baseball fields, horse shoe pits, field-house facilities, picnic area shelter, ice rink, handicap playground, soccer field, ample parking for residents and much more (see exhibit 5).

B. The addition of programs geared toward the African American Community;

That upon reading the Chicago Heights Park District program book, I saw virtually no programs geared to attract African Americans to the Park District or attempts to attract African Americans to any sporting activities other then [sic] basketball.

That the Park District programs are geared toward the White population, even though approximately half of Chicago Heights is not White. Pictures in the Park District program book are void of the park in my ward because of the lack of facilities at the park (see exhibit 6).

That the Chicago Heights Park District's current fee structure for membership and programs are prohibitive for many residents in my ward, therefore they can not use the services of the park district.

C. Input from the African American Community and incentives for low to moderate income families are non-existent in the Chicago Heights Park District.

That in 1997, the Park District finally constructed toilet facilities in the parks in the city which didn't have toilet facilities, (both in the Black community). However, no one asked the citizens in the community where it should be built, the size needed or style choices. Because of this

arrogant attitude, residents are unhappy. Residents wanted a park-house with bathrooms within it, not just a brick toilet house. All other parks have park-houses, while we are just now receiving toilet houses.

5. That my experience in politics, in Chicago Heights and in Bloom Township, indicates that African Americans have no power in slating candidates within both the Republican and Democratic parties.

That During the past elections of April 1, 1997 for Park District Commissioner and Bloom Township offices, African Americans did not have any input on who was slated by either the Democrat or Republican Parties. Two examples will illustrate this point. The township election had nine seats available.

That both political parties slated candidates rather than having a party primary.

That the Republican party didn't slate any African Americans.

The Democratic party slated one African American woman for one of the four trustee positions and one for the position of collector. The position of collector is a non-paying/no responsibility position, given that Cook County collects all taxes. Although the Democrats slated two African American women to token positions, African American Democrats were excluded from the process.

That the lack of African American influence in the slating process was proven when the seven White Democratic slated candidates filed their economic interest statements with the Cook County Clerk on January 13, 1997, one day *prior to the caucus date*. The caucuses on January 14, 1997

were suppose [sic] to select the candidates for the Township election. Both parties' caucuses were held in Chicago Heights (see exhibit 7).

That in addition, the only African American official of the Democratic organization in Chicago Heights (Leon Norwood) had publicly expressed his interest in being slated for the Township ticket. Mr. Norwood wasn't slated even though he is the member with the most seniority in the organization. In fact, when the slated Democratic Supervisor candidate dropped out of the race, the party chose a known Republican to fill the slot, rather than include Mr. Norwood on the ticket.

6. That my experience as a community leader and now Alderman in the City of Chicago Heights allows me to conclude than an Aldermanic form of government would be fair for all.

THE AFFIANT SAYETH NOTHING FURTHER.

/s/ Robert McCoy
ROBERT McCOY

SIGNED AND SWORN TO OR AFFIRMED BEFORE ME THIS 12th DAY, MAY, 1997

OFFICIAL SEAL
ROBERT L. ANDERSON
NOTARY PUBLIC STATE
OF ILLINOIS
MY COMMISSION EXP.
DEC. 20, 1997

/s/ Robert L. Anderson
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RON HARPER, KEVIN PERKINS, WILLIAM ELLIOT, and ROBERT McCOY, Plaintiffs,	Case No.: 87-C-5112
v.	Judge David H. Coar
CITY OF CHICAGO HEIGHTS and the CHICAGO HEIGHTS ELECTION COMMISSION, Defendants.	Consolidated
RON HARPER, KEVIN PERKINS, WILLIAM ELLIOTT, Plaintiffs,	Case No.: 88-C-9800
v.	
CHICAGO HEIGHTS PARK DISTRICT.) et al., Defendants.	

AFFIDAVIT OF KEVIN PERKINS

I Kevin Perkins, first being duly sworn, on oath state: I am a life-long citizen of the city of the Chicago Heights, IL. Currently, I reside at 1312 Lincoln Avenue, Chicago Heights, Cook County, IL. 60411. I was elected to the office of Alderman in the city of Chicago Heights (3rd Ward) in 1995. I have been an active plaintiff in the above identified action for the past 10 years. As a resident and now an elected representative, I have acquired a wealth of knowledge and I understand the history of the city of

Chicago Heights and Chicago Heights Park District as both relate to their community and governmental operations.

Based on my long time standing in the city and current position as Alderman and information from credible sources, that if I were called upon to testify, I would state the following:

ANALYSIS OF CITY EMPLOYMENT PATTERNS

1. The history of employment practices within the City of Chicago Heights has traditionally been unfair and discriminatory towards African Americans.

In the 100 year plus history of Chicago Heights city employment, only one African American has ever served in a supervisory position: the Chief of Police, Gerry Billups, appointed illegally in 1996: the position was never confirmed by the city. At the same time, the Mayor and the white city council members voted to create a new position: Superintendent of Police, once again this position never received the necessary votes. Thus making the Chief's position second in the organizational chain of command and allowing the former police chief (a white female) to remain his boss.

The majority of African Americans employed by the city, work in either the Street Department or Water Department. They work in the lowest paid positions and are rarely promoted.

African Americans and Hispanics together comprise approximately 51% of the city's total population, but represent only about 26% of the city's workforce. The

records in this case further indicate that at no period of time (in the past 70 years) have African Americans represented more than 17% of the city's workforce. Nor, have any department heads been minority, until the appointment of Chief Billups. (See attached analysis of City of Chicago Heights EEOC Reports).

LOCAL BOARDS and COMMISSIONS

2. Within Chicago Heights, local boards, committees and commissions as established and appointed by the mayor, have little or no influence in city government. Further, they do not adequately address issues of the communities which they were established to serve.

The various boards and commissions of the city only recently (since the Seventh Circuit Court of Appeals remanded this case back to the District Court) reflect some African American Participation. Membership in these organizations is appointed by the Mayor. These boards are only advisory in nature, in fact they meet only once a month. These boards and commissions lack any real power to influence change, except possibly the Police and Fire Commission. This one exception is political in nature and its members are traditionally non-minority. Other existing boards and committees include: the Emergency Telephone System Board, the Historic Preservation Advisory Committee, the Chicago Heights Housing Authority, and the Human Relations Committee. There are approximately 58 members total within these organizations, only 11 positions are filled by African Americans (roughly 18%), while African Americans comprise the largest group of citizens.

THE PERKINS and McCOY MAP

3. The Perkins and McCoy Map represents a fair and equitable apportionment plan which preserves subdivision lines and communities of interest, thereby creating a city wide low deviation percent.

During the summer of 1993, I constructed a rough draft of a seven single member district map of the city of Chicago Heights. Just recently Robert McCoy, Clarence Chestand and I submitted this same draft to Mr. Jason Pestine, a GIS Speicalist [sic] at the Metro Chicago Information Center to have the proposed map certified with updated computer software that is acceptable by the Federal Court system. This, the Perkins and McCoy map, largely preserves traditional precinct lines and natural boundaries of the city and at the same time does not draw odd shape wards. The constructed seven ward map retains known communities of interest, and the population of each district is between +/- 5% of the average ward population 4,724. I derived this figure from dividing the total population (33,072) indicated on the 1990 census data into seven equally populated districts.

The traditional East Side community consisted of the following precincts: 36, 38, 39, 40, and 41. All of which are majority African American and have existed well over 70 years. The precincts abut each other, and therefore are compact, contiguous and share similar demographics. In fact, only one precinct line was split to construct the East Side Ward in the Perkins and McCoy Apportionment Plan. In preserving these lines, the Perkins and McCoy map in no way impacts negatively on the total population deviation of the neighboring district: the Hungary Hill Ward nor the South Central Ward. In fact, the deviation

for Hungary Hill is 2.09% and 0 for the South Central Ward. This map of narrowly equal populations will allow minorities an opportunity to elect a candidate of their choice. The Perkins and McCoy map preserves the integrity of map subdivisions while maintaining a lower total population deviation. The plaintiff's map allows for community growth into areas that are demographically similar and politically cohesive.

The Perkins and McCoy map create wards of low deviation and an overall low city deviation. The Perkins and McCoy map largely limits voter's confusion by preserving political subdivision lines thereby reducing the need for voters to change their traditional polling places and participate in the process without being hindered.

The Perkins and McCoy map keeps the same communities of interest intact, just as the city's Comprehensive Plan and the Community Development Block Grant maps. The Comprehensive map represents the future development of the city and the CDBG map represents federal funding to very low-income communities. Both maps mirror the Perkins and McCoy Apportionment Plan. The city should not be allowed to split communities of interest for political reasons now that African Americans seek fairness and equal participation in the governmental process.

STRONG MAYOR FORM OF GOVERNMENT

4. The Strong Mayor form of government violates African American participation in the governmental process.

The Modified Strong Mayor form of government has silenced the voices of the two African American aldermen, thereby locking their communities out of the political process and hindering their influence to promote change for their communities.

This form of government allows too much power for the mayor and in fact encourages abuse of same. It limits the African American representatives to roles that are subservient to the mayor. The mayor has tie-breaking authority; whenever such an occasion arises, the Mayor casts his vote along racial lines. One example of this is when I (as Alderman) requested on five occassions [sic], over a two year time frame, information regarding an Economic Deveoplement [sic] District that comprises half of city's 3rd ward, where I serve. As of this date, I have not recieved [sic] these documents.

The Strong Mayor form of government calls for the mayor to hire all department heads. This contributes directly to the unfair and discriminatory patterns of hiring and other employment practices in city government.

The Strong Mayor form of government allows the mayor to be unresponsive to all representatives regarding basic requests (for information or documentation) to perform their elected duties, there are no cheeks and balances regarding the mayo'rs [sic] power, at the expense of the miniority community.

The Modified Strong Mayor form of government with this six (6) ward scheme, allows the mayor to appoint the City Clerk and the City Treasurer. Presently, this Treasurer is not a resident of the city and has not been since his appointment approximately seven (7) years ago. The mayor and the three non-minority council members voted to make a special exception for him to live outside the city while the minority representatives voted not to. Once again, the tie-breaking vote was cast by the Mayor. The Mayor in this structure of government acts as a super alderman with powers to influence all levels of government, not just the Executive Branch. Coupled with the right to veto, to vote more times than not, and the power to hire and dismiss, this system does not enchance [sic] minority participation. In fact, it controls their involvement in the process.

THE CHICAGO HEIGHTS PARK DISTRICT

5. The Chicago Heights Park District governmental structure dilutes African Americans chance to elect a Board President.

The Chicago Heights Park District governmental structure has the same effects as the outlawed at-large government system as it dilutes African Americans opportunity to elect a Board President due to the alteration to the Special Park District Code of Illinois that creates an at-large component. This at-large aspect virtually guarantees that a non-minority will be elected to this position, based an the years of racial block voting and other similar biased practices. If the Park District follows the Special Park District Code that calls for the creation of a seven member board, then this would provide an opportunity to have a minority serve as Park Board President.

Little or no change has occurred since the inception of this new governmental system. African Americans still work in the lowest paying jobs, few if any minority vendors are awarded major contracts and the fact remains that the two major parks in minority communities do not have park house facilities, whereas non-minority parks do, and they provide a varitiy [sic] of senior and youth programs and serives [sic] for their communities. At the same time the main Park District Facility within the city is not income accessible to residents of the minority community. Approximately 81% percent of residents living in the 3rd ward are defined as being very low to moderate income level, and are without disposable income to pay for recreational activities membership nor fees.

All of the above stated facts and conclusions would provide a fair opportunity for minority representation and participation in an Aldermanic System of government as provided by state law.

Further, Affiant Sayeth Not

Subscribed and sworn to before me

This _____ Day of May, 1997

_____

Kevin Perkins

_____

Notary Public

_____